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Transcriber's Office

Judiciary Committee
March 01, 2013

[LB300 LB564 CONFIRMATION]

The Committee on Judiciary met at 1:00 p.m. on Friday, March 1, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. We're starting today with five gubernatorial appointments for confirmation. And four of them are for the Crime Victim's Reparations Committee and one for the Board of Parole. So I think what we'll do is, well, we'll start and go down the line with Jeff Davis, who is...has been nominated for the Crime Victim's Reparations Committee is...I know he was here earlier at lunch, so here he is. Sheriff. [CONFIRMATION]

JEFF DAVIS: (Exhibit 1) Thank you, Senator. My name is Jeff Davis. I've been in law enforcement for over 39 years. I was honored when asked to serve on the Crime Commission and, ultimately, the Crime Victim's Reparations Committee. I've attended a couple of meetings and learned quite a bit, and I'm eager to serve. If you have any questions, I'd be glad to answer them. [CONFIRMATION]

SENATOR ASHFORD: I have no questions other than to say that you've done a good job, it seems, and it not only seems that you have. You've got the fund up to a significant level now, much greater than what it was. And, you know, everything we hear or I hear is positive, so keep up the good work. [CONFIRMATION]

JEFF DAVIS: Thank you. [CONFIRMATION]

SENATOR ASHFORD: Any questions of Sheriff Davis? Seeing none, thank you. [CONFIRMATION]

SENATOR LATHROP: Nope. Thanks for your service. [CONFIRMATION]

JEFF DAVIS: Thank you. [CONFIRMATION]

SENATOR LATHROP: Good to see you again. [CONFIRMATION]

JEFF DAVIS: Thank you. Good to see you too. [CONFIRMATION]

SENATOR ASHFORD: Joe Kelly. Is Joe here? Joe is not here. Derek Vaughn. There's Derek. I was told you were coming down today, Derek. [CONFIRMATION]

DEREK VAUGHN: I am. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: Welcome. [CONFIRMATION]

DEREK VAUGHN: (Exhibit 3) Thank you. My name is Derek Vaughn. I'm a deputy Douglas County attorney in the Douglas County Attorney's office. I've been at the Douglas County Attorney's office for a little over 13 years, going on my 14th year, and I am assigned to the programs. And so I work in the drug court, young adult court, and Mental Health Diversion Program. I've been...I'm on the Crime Commission as well, and this is actually my second reappointment to the Crime Victim's Reparations Committee. And it's been a true honor to serve the citizens of Nebraska. I'm just asking that you support the recommendation from the Governor. [CONFIRMATION]

SENATOR ASHFORD: I would concur. I think you've done a great job. Thanks, Derek. Any questions of Derek? I don't see any. Thank you. [CONFIRMATION]

SENATOR LATHROP: Nope. Thanks for what you do though. [CONFIRMATION]

SENATOR ASHFORD: Thanks for coming down. [CONFIRMATION]

DEREK VAUGHN: Thank you. [CONFIRMATION]

SENATOR LATHROP: Appreciate you coming down too. [CONFIRMATION]

DEREK VAUGHN: Thank you. [CONFIRMATION]

SENATOR LATHROP: Have a great weekend. [CONFIRMATION]

DEREK VAUGHN: You too, thanks. [CONFIRMATION]

SENATOR ASHFORD: Yes. Michelle Schindler. Is Michelle here? There she is. [CONFIRMATION]

MICHELLE SCHINDLER: (Exhibit 4) Good afternoon. I'm Michelle Schindler. I've worked with juvenile services and been the director of the Youth Services Center for the past 20 years. I was very honored to be asked to serve on the Crime Commission Board and then, consequently, the victims board. I think it's very important to also focus on the fact that people are harmed and for restoration to them or the community. So you guys have any questions? [CONFIRMATION]

SENATOR ASHFORD: You know, it is an important agency, and we appreciate your service. Any questions of Michelle? [CONFIRMATION]

SENATOR LATHROP: Nope. Thanks. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

MICHELLE SCHINDLER: Thanks. [CONFIRMATION]

SENATOR MCGILL: Thank you. [CONFIRMATION]

SENATOR ASHFORD: Thank you. [CONFIRMATION]

MICHELLE SCHINDLER: Thank you. [CONFIRMATION]

SENATOR ASHFORD: The next nominee is for the Board of Parole: Rex Richard. Do you have...hi, Rex. Do you want us to...oh, there we go. Okay. Go ahead.
[CONFIRMATION]

REX RICHARD: (Exhibits 5-7) Good afternoon, members of the Judiciary Committee. My name is Rex Richard. I'm here today seeking confirmation of my appointment by Governor Dave Heineman to the Nebraska Board of Parole. I began this appointment on June 20, 2012, to fill the position vacated by Robert Boozer, who died while in office. If confirmed, this appointment would be in effect through September 9, 2018. Upon graduation from the University of Nebraska in 1978 with a bachelor of science degree in criminal justice, I began employment with the Nebraska Department of Correctional Services as an officer at the Nebraska State Penitentiary. Over the next 33.5 years, I have progressed through a variety of positions with that department, which involved changing facilities a total of nine times. The years from 1984 to 1994 were spent in Omaha-based facilities, with the balance of time served in the Lincoln area. In June of 1998, I became warden at the Community Corrections Center-Lincoln. I feel it is very safe to say that for the next 14 years a portion of each of my work days involved concerns with inmate reentry issues. Thousands of inmates passed through the facility during that time period, and it is my opinion that a high percentage of them benefitted from the experience. In the fall of 2011, Corrections Director Houston asked me to assume the role of reentry coordinator for the Department of Corrections. Part of my responsibilities in this position was to work with the Board of Parole to coordinate reentry efforts between the two entities. As a result of hard work on the part of both agencies, parole numbers climbed during that time period from average of 893 individuals on parole in December of 2011 to 1,218 parolees in December of 2012. Parole may be misunderstood by many citizens. It's not an early release, as I sometimes hear it described by the media. It's a vital part of the criminal justice system and one that affords greater public safety if carefully granted and proper supervision is afforded. The supervision of parolees has evolved in recent years with the advent of technologies which allow the constant tracking of individual movement in the community and the ability to get nearly instant notifications if the parolee consumes alcohol. These, along with the constant vigilance of the assigned parole officer, serve to add another level of confidence that the public is being protected while the parolee is being afforded the opportunity to progress in his or her reentry journey. If there are questions, I will

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

answer them now. [CONFIRMATION]

SENATOR ASHFORD: Any questions of Rex? [CONFIRMATION]

SENATOR LATHROP: Just this: You've been doing this for a while. You said you were appointed... [CONFIRMATION]

REX RICHARDS: June 20. [CONFIRMATION]

SENATOR LATHROP: ...after Bob Boozer's untimely death? [CONFIRMATION]

REX RICHARD: Yes, sir. [CONFIRMATION]

SENATOR LATHROP: And so you've been doing it eight months? [CONFIRMATION]

REX RICHARD: Just over eight months, yes, sir. [CONFIRMATION]

SENATOR LATHROP: Okay, thanks for what you've been doing. [CONFIRMATION]

SENATOR ASHFORD: Yes, Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: I'm going to be very frank with you, and I want you to be frank with me. Are you going to be governed in your decisions by what the public attitude might be with reference to whether people are to be paroled or not? Or will you look at each individual case and, if a person is entitled to parole, despite what the outcry might be at a given time, what would you do? [CONFIRMATION]

REX RICHARD: The board is sensitive to victims. As far as the public, we serve the public. And reacting to public outcry is not serving the public, in my opinion. [CONFIRMATION]

SENATOR CHAMBERS: Now in your...your term will run until when? [CONFIRMATION]

REX RICHARD: September 9, 2018. [CONFIRMATION]

SENATOR CHAMBERS: Twenty eighteen. My term, my four-year term, ends...you're going to make me have to run for a second term because, if you mess up, I want to be here to punish you, because I'm going to go by what little information I've gathered and the opinions from people whom I respect. So as of now, I don't have anything, based on my personal knowledge of you, to judge you by. So either you're not going to be punished by me because you lived up to what people said, or you're going to disappoint a lot of people, including me, and you will have to pay. You don't even know what I'm talking about, do you? (Laughter) [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

REX RICHARD: Within reason, Senator, yes, sir, I do. [CONFIRMATION]

SENATOR CHAMBERS: Do you understand what I've said generally?
[CONFIRMATION]

REX RICHARD: Yes, very much so. [CONFIRMATION]

SENATOR CHAMBERS: Okay, if we understand that, then I don't have anything else.
[CONFIRMATION]

SENATOR ASHFORD: Well, all I would just, Rex,...and you do come very highly recommended by numbers of people. And so I am very confident in sending this nomination to the floor of the Legislature. And I think it's a great opportunity for us and for the Parole Board. You know, we do have in Director Houston someone who is very conscious of all the issues that go on, and I...in the communities and in the public. One of the points that I think Senator Chambers...not I think, I know Senator Chambers was making, and it's an important one, and that is this desire of certain people in government or the public generally to be swayed by this, sort of, tough-on-crime attitude. And I know you know what we're talking about, correct? [CONFIRMATION]

REX RICHARD: Yes, sir. [CONFIRMATION]

SENATOR ASHFORD: All right, and that comes and goes. And sometimes it's...it occurs most readily at times around elections, and some...the great thing to say is, well, this person is not tough on crime. And what I've always been impressed by Director Houston is his ability to address issues, as they come up, in a balanced manner. And I think, for me, that's what I'd like to continue to see on the Parole Board. And certainly, Bob Boozer is a longtime friend, and it is a loss to the state, as I'm sure you know and agree with. It's that balanced approach, that ability to address the needs of the inmate and the needs of the public in a balanced way. Sometimes, the public is not made any safer by policies that, ostensibly, are designed to make the...to be tough on crime. And so...but your background, in my view, would be otherwise, that it's a professional background, that you're not swayed by the vicissitudes of a knee-jerk reaction to a particular event but are willing to look at the total situation. And those whom I've talked to, including Director Houston, have indicated to me that that is a kind of approach you take. And I don't...I honestly don't think there's any more important position in state government right now than the Parole Board. You know, we have a large number of inmates now and many offenders. And I think my number is right: Somewhere around 80 percent of our inmates are...have committed...well, that are eligible for parole or are paroled or released within three years. So the...that's a challenge then for you to, you know, figure out what do you do. How do you get these people reentered properly? How do you reintegrate them to...with their families? And how do you help them find work? It

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

doesn't do any good to put people back...offenders back on the street with no direction, with no hope of getting anything. And so what we're striving for on the Parole Board, I think, is that balance, that ability to understand the complexities of today's society. And placing an offender back into that environment is...can be very, very challenging. And I know you know that but, again, I think that you're going to do a great job, have done a great job, replacing Bob. A hard act to follow, but...and with that, I don't have any questions. Senator Seiler. [CONFIRMATION]

SENATOR SEILER: Sir, on your handout, I'm just curious about...on the average sentence length in months. From 2001, it looks like about 57 months. And then, in 2012, you're up to almost 66 months. I know it goes up and down a little bit. But on a general slant, is that...do you know what's accounting for that? [CONFIRMATION]

REX RICHARD: No, I cannot respond to that, other than just the judges are giving more time. [CONFIRMATION]

SENATOR SEILER: Okay, that's fair. And if the judges are giving more time, that's what I...or are the crimes more significant, or both? [CONFIRMATION]

REX RICHARD: There has been a shift in crime over the last 33 years that I've been involved with the department. And please don't quote me on these numbers. I didn't bring them. But when I began, the number one crime of commitment was burglary. And now, of the population that we have, it's much higher sex offenses and drug-related offenses. So it's shifted over the years. I don't know that violent crime, necessarily, is up as much as the proportion of where the violent crime occurs--tends to be more towards sex offenses at this time. [CONFIRMATION]

SENATOR SEILER: Thank you very much. That's all I have. [CONFIRMATION]

SENATOR ASHFORD: Thank you, Senator Seiler. I don't have...we don't have...I don't see any other questions. Thanks, Rex, and good luck. [CONFIRMATION]

REX RICHARD: Thank you. [CONFIRMATION]

SENATOR ASHFORD: Joe Kelly. No, Joe Kelly is not here. That will close the confirmation hearings. (See also Exhibit 2) We'll now go to the first bill on our agenda today. We're a little early. I don't know...what do we have here? Senator Nelson is on his way. So as soon as he gets here, we'll start. [CONFIRMATION]

The Committee on Judiciary met at 1:30 p.m. on Friday, March 1, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB564 and LB300. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Okay, we have two bills today. The first bill is LB564 and the second bill is LB300. The first bill, we'll start at 1:00, we'll start now, and we will finish at 3:00. So you can divide...how many proponents, those that are for the bill are here? Okay. How many are here that against...opposed to the bill? [LB564]

_____: We have more proponents. We were told 1:30 so there's... [LB564]

SENATOR ASHFORD: That's fine. No, okay. But... [LB564]

_____: There's probably nine proponents (inaudible). [LB564]

SENATOR ASHFORD: Okay, thanks. All right, we'll start...no, there's no difficulty and I'm starting early, so no worries. Anyway, we'll complete...we'll split the time and we'll be done by 3:00. And then LB300. How many are here for LB300? Okay. How many are opposed to LB300? Okay, not so many. So we probably will be fine there. Let's start with Senator Nelson and LB564. John. One reminder to everyone. Some of you have been here before, some of you have not. We do have a light system. After the introducer Senator Nelson introduces his bill, then each testifier has three minutes to make their comments. The yellow light would indicate we'd like you to start summing up what you're saying, and the red light would mean that we would ask you to complete your comments or to stop. And then we would answer...if you have any questions, it's not counted, obviously, against the three minutes. But I guess that's about it. Why don't we start, Senator Nelson, if you would with LB564. [LB564]

SENATOR NELSON: (Exhibit 1) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is John Nelson, spelled N-e-l-s-o-n, and I represent District 6 in central Omaha. I'm here today to introduce LB564 which will adopt the Health Care Freedom of Conscience Act. LB564 is critical for protecting the conscience rights of healthcare professionals in Nebraska. In recent years, local healthcare professionals have become increasingly concerned about their ability to practice medicine in accord with their religious beliefs or their moral and ethical principles. Indeed I'm aware that last fall the Nebraska Medical Association adopted a resolution by a near unanimous vote expressing a need for legislation protecting the conscience rights of healthcare professionals in this state. LB564 will provide needed protection for healthcare providers and healthcare facilities. The bill grants a narrow right to decline to participate in healthcare functions that violate one's sincerely held conscientious beliefs. It broadly defines "health care function" and "participate" to accommodate the variety of religious, moral, and ethical principles held by healthcare professionals. Contrary to the opinion of some, LB564 will not open a Pandora's box in the healthcare profession. The federal Emergency Medical Treatment and Active Labor Act will, of course, still apply by operation of law. That's known as EMTALA, and this federal act requires virtually all

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

hospitals in the United States to provide appropriate care for patients suffering emergency medical conditions. Additionally, LB564 will not permit discrimination on the basis of status or authorize forced procedures against the will of the patient. Finally, I'm not aware of any specific evidence showing that LB564 will deny anyone access to elective services. As you can see, and I think you have copies, I have introduced AM453 to replace the original bill. Much of the original bill is retained but the amendment does make some important changes. It clarifies that this act applies only to licensed healthcare providers and healthcare facilities. Protections for healthcare facilities will be in accord with their printed religious, moral, and ethical principles. Healthcare providers and facilities will not have immunity from criminal and civil liability under the updated act. The Department of Health and Human Services may still investigate healthcare providers and facilities for any act or omission. The amendment clarifies that healthcare providers and facilities shall still be subject to any duty to refer that doesn't violate their consciences. Finally, healthcare professionals must provide advanced written notice of their conscientious objections to their employers as soon as practicable and employers must reasonably accommodate such objections. This updated bill is the product of a collaborative effort by local doctors and advocacy groups, along with the expertise of several attorneys with experience in drafting conscience legislation. You will hear good testimony today from many of these individuals. I ask that you seriously consider their concerns and advance this bill to the floor for debate. With that I'm willing to take any questions. [LB564]

SENATOR LATHROP: Senator Chambers. [LB564]

SENATOR CHAMBERS: Senator Nelson, I'm going to be frank with you. This bill is so overbroad, so unreasonable, such an attempt to put various people's religious dogmas, ethical standards that they can refuse anybody and say, well, I don't...my conscience won't let me do that; my religion won't let me do that. In the military, if you're a conscientious objector, you don't have to go, period. When we as black people were discriminated and felt that certain practices were against our conscience and we engaged in civil disobedience, we went to jail. So if people are going to follow their conscience it may mean that a privilege granted by the state will not be granted to them. The service of patients is far more important than anybody's conscience. And when there are facilities licensed by the state, regulated by the state, then the interest of the patient is uppermost. And if somebody's conscience is so tender and sensitive, then they can find a different line of work. As they told us, if you don't want to come...if you don't want to go jail, don't come out here in the street, don't walk down this sidewalk, don't sit in that seat. There are consciences...there are consequences to be borne when certain actions are placed. So rather than waste my time and that of the people who will testify on the bill, there won't be a lot of questions that I will ask; but if something is said that I find particularly provocative then I will ask questions for clarification. But other than that, I think this is an exercise in the expression of people's religious beliefs and they can believe anything that they want to, but if it's going to impinge on what the duty

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

of a healthcare provider is, then it's a different matter, because I will not do or support anything that's going to restrict what the Medical Center or any healthcare facility does because an individual says I want to work here but I don't want to play by the rules. And you don't even have to respond because there's no question in that. [LB564]

SENATOR NELSON: I have only one response is that our constitution, our Nebraska State Constitution says that there will not be any interference with the rights of conscience in this state. And you're maintaining that the state of Nebraska that health takes, shall we say, trumps whatever conscience rights there may be. Is that your position, Senator? [LB564]

SENATOR CHAMBERS: You gave your interpretation of what I said but let me try to make it clear again. [LB564]

SENATOR NELSON: All right. [LB564]

SENATOR CHAMBERS: You're a lawyer. [LB564]

SENATOR NELSON: Yes. [LB564]

SENATOR CHAMBERS: Does a person have a right to enter a medical school, or does a medical school have a right to accept whom they please? [LB564]

SENATOR NELSON: They accept by examination. Yes. [LB564]

SENATOR CHAMBERS: Right. And if a lot people pass the examination, they don't have to accept all these people if there's not room. They make decisions based on something other than just the examination score. Are you aware of that? [LB564]

SENATOR NELSON: Yes, I am. [LB564]

SENATOR CHAMBERS: And the same with law school? [LB564]

SENATOR NELSON: True. [LB564]

SENATOR CHAMBERS: Then why can't they say, I think that you've treated me wrong? I have a right...all right, if you don't have a right to get into medical school, if you do go in medical school and become a doctor, you have a right to force your way into a hospital and get staff privileges? [LB564]

SENATOR NELSON: No. [LB564]

SENATOR CHAMBERS: They can set standards as to what the staff must meet in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

order to have staff privileges. [LB564]

SENATOR NELSON: True. [LB564]

SENATOR CHAMBERS: And if a person says I'm a surgeon but there are certain types of operations I won't perform, then they are discriminating against that person based on this bill? [LB564]

SENATOR NELSON: Against what person? [LB564]

SENATOR CHAMBERS: The one who says my conscience prevents me from performing certain... [LB564]

SENATOR NELSON: The act prohibits them from doing that as long as they've had reasonable notice that the new doctor or medical person has these rights of conscience, and under those circumstances he is entitled...he or she is entitled then to decline to...on matters of health, functions of health that are against his or her conscience, to decline to perform those procedures. [LB564]

SENATOR CHAMBERS: And the hospital has the right to say then you cannot be on the staff here. [LB564]

SENATOR NELSON: They do not. They can't discriminate against him. It's right here. They cannot... [LB564]

SENATOR CHAMBERS: If they've got space for three surgeons and this one says I'm not going to do that, then the other two are going to have to do... [LB564]

SENATOR NELSON: They're subject to civil liability, Senator, if they try to do that. [LB564]

SENATOR CHAMBERS: The other two are going to have to do more, and this bill says the fact that letting this person not perform these services creates a burden on others makes no difference. And that's not a defense. In other words, these people's conscience, as it's called, outweighs and trumps everything else in a medical care facility,... [LB564]

SENATOR NELSON: Not if... [LB564]

SENATOR CHAMBERS: ...the operation of it. [LB564]

SENATOR HARMS: Not if we're talking about life and death matters. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: I'm not talking about life and death matters. [LB564]

SENATOR NELSON: Well, that's part of the bill, Senator. [LB564]

SENATOR CHAMBERS: That's the only time when it does not come into play. But there are a lot more things, a lot more activities, a lot more surgical procedures that don't involve impending life and death. And if there are some who don't have to carry their weight, then others are going to have carry more. But as I told you, I will listen to what those who support this bill have to say, but you know what my position is: very strongly opposed to this. And it's happened in other states, hasn't it. But there have been other states that tried to get this enacted, isn't that true? [LB564]

SENATOR NELSON: I don't know, Senator. I don't know about the other states. I just know what our Nebraska Medical Association would like to have in legislation and what we're trying to do here. And I really...I appreciate your listening and you will hear good testimony today and I hope it will be persuasive. [LB564]

SENATOR CHAMBERS: So when you said, the medical association, you mean the AMA? [LB564]

SENATOR NELSON: The Nebraska Medical Association. [LB564]

SENATOR CHAMBERS: And they support this bill? [LB564]

SENATOR NELSON: Yes, by resolution. [LB564]

SENATOR CHAMBERS: I sure am going to listen to them. [LB564]

SENATOR NELSON: All right. Thank you, Senator. [LB564]

SENATOR ASHFORD: Senator Seiler. [LB564]

SENATOR SEILER: I just have a drafting question. Go to Section 3...or it's Section 2, the third part of that, line 17 on the very front page, the very first page. When you're talking about the healthcare provider and "violates his or her conscience," then you have the term "and (b) to protect" the basic civil rights "of each health care facility." Do you mean "and" in there, that you have to have both units present... [LB564]

SENATOR NELSON: Well, we have... [LB564]

SENATOR SEILER: ...or are you attempting either one? [LB564]

SENATOR NELSON: Both. Throughout the bill we have to deal with the healthcare

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

providers. That's just a doctor or a nurse or something like that. And we have to deal with a healthcare facility such as a hospital, a clinic; and so we're including both there. [LB564]

SENATOR SEILER: But you're not wanting them to be...you have...you couldn't find against...or for the carrier...or the provider without finding for the facility the way it's written here. "And" is conjunctive meaning they have to go together. [LB564]

SENATOR NELSON: Well, then that might be a drafting error... [LB564]

SENATOR SEILER: That's what I was... [LB564]

SENATOR NELSON: ...or something we ought to correct. I agree with that. Our intention... [LB564]

SENATOR SEILER: Okay. And I'll agree with that. [LB564]

SENATOR NELSON: All right. [LB564]

SENATOR SEILER: Or if you took the (a) section and separated it with a colon up there where you break off, and then come down and have a separate (b), then it would be...you'd cover both of them. [LB564]

SENATOR NELSON: That... [LB564]

SENATOR SEILER: Okay. [LB564]

SENATOR NELSON: Certainly the committee could fix that. [LB564]

SENATOR SEILER: Thank you. [LB564]

SENATOR NELSON: Yes. Thank you, Senator. [LB564]

SENATOR ASHFORD: I don't see any other questions. Thanks, John. [LB564]

SENATOR NELSON: All right. Thank you. [LB564]

SENATOR ASHFORD: All right. We're going to go to those who support this bill. There's not a whole lot of room but when you come...when you wish to testify, if there's space at all towards the front--and there isn't much room--but you may want to come sit in the front. It will be easier to come up and testify. And just give us your name for the record and you don't need to spell it unless it's complicated. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

ANNE FRANZONELLO: (Exhibit 2) Oh, mine is complicated. I am going to have to spell for you already. Mr. Chairman and members of the committee, I am Anna Franzonello. Do you want me to go through Franzonello? [LB564]

SENATOR ASHFORD: Sure. [LB564]

ANNA FRANZONELLO: F-r-a-n-z-o-n-e-l-l-o. And I'm staff counsel with Americans United for Life Action. It's the legislative arm of Americans United for Life, a national public interest law firm with a practice in abortion and bioethics law. I have thoroughly reviewed LB564, which provides protection and an adequate enforcement mechanism for healthcare providers' freedom of conscience. I am testifying in this proceeding as an expert in constitutional law and as an expert on laws respecting the freedom of conscience. I appreciate this opportunity to speak with you today and I've submitted written testimony that elaborates on my comments. Since 1977, in the wake of the U.S. Supreme Court's decision in Roe v. Wade, Nebraska law has protected without exception the right not to participate in an abortion and prohibits discrimination against any individual for refusing to participate in an abortion. Nebraska's law also respects the right of the freedom of conscience for institutions in regards to abortion. Over the last nearly four decades the list of ethical dilemmas in medicine has continued to grow; for example, embryo-destructive stem cell research, abortion-inducing drugs, embryocidal drugs and devices, and end-of-life directives. While the list of ethical dilemmas increases, so do attacks against the freedom of conscience of healthcare providers. LB564 ensures that the medical profession remains guided by conscientious care, not coerced by ideology. Moreover, protecting the freedom of conscience is critical to slowing, not exacerbating, shortages in healthcare professionals and ensuring access to healthcare in Nebraska. Article I, Section 4 of the Nebraska Constitution states broadly in its defense of religious freedom that "...nor shall any interference with the rights of conscience be permitted." The Founders of the United States also believed protecting the freedom of conscience was of utmost importance. Although our nation and the state of Nebraska have long traditions announcing the freedom of conscience, history provides ample examples where that ideal has not been respected, and Senator Chambers, you elaborated on some of those as well. Discrimination is an unfortunate part of our history. Experience demonstrates, therefore, that statutory protections are necessary to prevent discrimination and coercion and provide redress where rights have been violated. LB564 does not narrow the principle of conscience to religion. Freedom of conscience is a pluralistic right, one embraced by religious and nonreligious persons alike. LB564 is not based on respecting one faith but on respecting the integrity of all individuals. Comprehensive conscience protections, such as included in LB564, are not a novel idea. Similar to LB564, federal law, specifically the Church Amendment, does protect healthcare providers from discrimination on the basis of their objection because of religious belief or moral conviction to performing or participating in any lawful healthcare service or research activity. However, federal conscience laws are attached to specific federal spending measures. In addition, federal conscience laws currently

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

lack a private right of action, meaning that a healthcare provider in Nebraska has to rely on the U.S. Department of Health and Human Services' choice to take action against the discriminator. Nebraskans deserve better than to have their rights hinge on the agenda of whatever the current administration in Washington, D.C., happens to be. LB564 ensures that the freedom of conscience is a reality, not a platitude in Nebraska. [LB564]

SENATOR ASHFORD: Anna, I'm going to see if there are any questions and we'll...yes, Senator Christensen. [LB564]

SENATOR CHRISTENSEN: Thank you, Chairman. Would you talk about, on the bottom of 6 on your testimony, talks about in a 2008 survey, 91 percent? [LB564]

ANNE FRANZONELLO: Right. [LB564]

SENATOR CHRISTENSEN: Can you explain that a little bit? [LB564]

ANNE FRANZONELLO: Well, so, in a 2008 survey, 91 percent of faith-based physicians agreed that they would rather stop practicing medicine altogether than be forced to violate their conscience. And that's why it's important to protect conscientious...for the state of Nebraska. It actually provides more access to healthcare, because once you start pushing people out of the practice of medicine because you're saying they have to because of...you know, board requirements are different things. Or, for example, Senator Chambers, you were asking about what other states' laws are. And Illinois actually has a comprehensive law similar to LB564, and in 2005, then-Governor Blagojevich issued an edict saying that all pharmacies had to stock and dispense Plan B, the so-called morning after pill, which has known postfertilization effects. So that violated the conscience rights of some pharmacy owners. But because Illinois already had a comprehensive conscience law, their pharmacies that after, you know, seven years of litigation, the court found that their rights were protected under this particular law. They were able to keep their pharmacies open, actually ensuring more access to healthcare in Illinois. Because once those pharmacies close because of ideology, those areas that they were servicing would have been without any access to care because of a prioritization of the specific item or service. [LB564]

SENATOR CHRISTENSEN: Thank you. [LB564]

SENATOR ASHFORD: Thank you, Anna. I don't see any other questions. Thanks for your comments. And we do have...I think we have everything you said. [LB564]

ANNE FRANZONELLO: Yeah. It's very long, because I'm a woman and a lawyer, so three minutes was really tough, so I figured I'd write it down. So you've got ten pages' worth of what I would have really said. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: Well, thank you for putting your material in writing. Thanks, Anna. [LB564]

ANNA FRANZONELLO: Thank you. [LB564]

DALE MICHELS: (Exhibit 3) Good afternoon, Senator Ashford and members of the committee. I'm Dr. Dale, D-a-l-e, Michels, M-i-c-h-e-l-s. I'm a family physician of 38 years here in Lincoln, Nebraska. And I'm here, first of all, to provide you information which I believe you received from the NMA, which relates to the resolution that was passed as well as a letter of support for LB564 as amended. I, as an individual, would like to take just a slightly different tack and ask each one of you to think about yourselves ten years from now. You are in the hospital. You have a serious life-threatening but recoverable illness. So if rights of conscience bill, LB564, is passed, the healthcare professionals who care for you can treat you according to their conscience and do what they can. If they can't treat you because you want something that cannot be done, they can arrange to have someone else provide the care for you. If LB564 is not passed or something similar to it, you're asking, in essence, those licensed healthcare professionals to leave their conscience at the door, because realistically, their job, their career, their license is at risk if they're forced to do what their employer or your insurance company or the government rules require. And that's a great concern for us thinking about it not now perhaps but down the future. I know there have been concerns about why we're doing it now because there doesn't seem to be a big issue in Nebraska. But we're trying to be preemptive. If item (b) is adopted or if there is not an LB564 right of conscience for those of us in the healthcare professions, then, and they or we--and in ten years I'll probably be on the other side as a patient, not as a practicing physician--they must do what violates their conscience. And then the question comes is can you as a patient be forced to violate your conscience and have something done that you don't want to do because there is a government rule or regulation that says this is what must be done. So I think the conscience issue is well beyond religion. I think it's an important ethical concern. For those of us, we all have a belief standard, and so we feel strongly that with the amendments that Senator Nelson has brought forward that LB564 should be advanced and brought to the floor for debate. [LB564]

SENATOR ASHFORD: Any questions of Dr. Michels? I don't see any. Thanks, Dale. [LB564]

DALE MICHELS: Okay. [LB564]

CLYDE MECKEL: (Exhibit 4) I'm Dr. Clyde Meckel, M-e-c-k-e-l. I am a physician in Lincoln, Nebraska. Chairman Ashford, members of the committee, thank you for the opportunity to testify in support of LB564, the Health Care Freedom of Conscience Act. The purpose of this bill is to respect and protect the fundamental right of conscience of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

licensed individuals who provide healthcare. This is a critical matter of protecting one of our most fundamental liberties. Our nation has long upheld the protection of individual conscience from governmental coercion. Thomas Jefferson wrote, "Our rulers have authority over such natural rights only as we have submitted to them. The right of conscience we never submitted, we could not submit." In a letter to the Quakers, George Washington asserted that government was instituted, among other purposes, "to protect the persons and consciences of men from oppression." He added, "...it is my wish and desire that the laws may always be extensively accommodated to the conscientious scruples of all men, as a due regard to the protection and essential interests of the nation may justify and permit." The most common application of the right of conscience is the right to refrain from taking human life. This right has been protected in the arena of compulsory military service, as well as those of abortion, assisted suicide, and capital punishment. Liberals and conservatives alike agree that the right of conscience exists regardless of whether they sympathize with the objector's particular stance. Right of conscience protects those who dissent from a norm or prevailing standard, and it applies when a cogent argument can be made that a grave wrong is being done. The primary battlefield in which conscience rights are seriously threatened today is the healthcare system. More than ever, in this era of big business and big government medicine, healthcare needs conscience-driven doctors, nurses, and other providers. Patients want compassionate, competent, and conscientious care from providers, that is, from those who have moral integrity. That very integrity is vanquished when physicians and other providers are forced to violate their own conscience. Medicine certainly requires technical competence, but is fundamentally a moral activity, since an essential part of its practice is helping patients decide what they ought to do in particular situations. The physician-patient relationship is a covenantal one requiring trust that the physician is acting on the patient's behalf. I hope none of us here will end up in a critical situation being cared for by a deconstructed physician or other provider who has learned to check his or her conscience at the door when arriving to work each day. It is therefore critical that physicians and other healthcare workers be protected from having their integrity compromised by being compelled into acting against their consciences by patients, health systems, or government agencies. Americans enjoy constitutional protection to make their own decisions about the issues surrounding personhood and the mystery of human life, and this should logically extend to healthcare professionals in the context of their work. Our state constitution states that interference with rights of conscience is not to be permitted, and LB564 provides statutory protection for these rights of licensed healthcare providers. Thank you. [LB564]

SENATOR ASHFORD: Thank you. Any questions? [LB564]

SENATOR LATHROP: Just one. [LB564]

SENATOR ASHFORD: Senator Lathrop. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: Do you think this bill changes the standard of care for physicians? In other words, if the standard of care currently requires that a physician do a particular procedure, does this provide an exception to the current standard of care? [LB564]

CLYDE MECKEL: I do not believe it does. I do believe it provides for a physician who has a conscientious objection to a particular line of care to still be able to practice in the medical profession and step away--this is an opt-out bill--allows this physician to step away from that therapeutic relationship, provide referral to someone else, and still be able to practice medicine. [LB564]

SENATOR LATHROP: Do you know that the bill regards referrals as a procedure? [LB564]

CLYDE MECKEL: The bill requires referral. This bill... [LB564]

SENATOR LATHROP: The bill makes referrals a procedure. [LB564]

CLYDE MECKEL: Well... [LB564]

SENATOR LATHROP: So you could refuse, because it's a procedure you don't agree with, to do a referral. [LB564]

CLYDE MECKEL: My understanding...my...again, I don't draft bills, okay? [LB564]

SENATOR LATHROP: Did you read this one? [LB564]

CLYDE MECKEL: Yeah, I did. I did. And we actually...as I'm also a member of the NMA, and we actually required that the amended bill had a referral...required general referral so if somebody exercises their conscientious objection, they would...and they're stepping away from a relationship... [LB564]

SENATOR LATHROP: Did you see that in here? Because...and maybe this is a drafting thing, but when I read this, the only duty of a person who has an objection is to speak to the patient and say I have a moral objection or I have a conscience objection. And I don't see in here where they have a duty to... [LB564]

CLYDE MECKEL: I will say that would be against the ethical code... [LB564]

SENATOR LATHROP: Wait a minute. Let me finish...let me finish my question. I don't see that there is a duty in here to go down the hall and find a different physician, to bring in someone who will do the procedure that you wouldn't if you were to exercise

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

your conscience right under here. [LB564]

CLYDE MECKEL: Okay. That's a different question. General referral is required, I believe, in the bill. I'm not...again, if it's written, how it's written, but my understanding is and what our intent was, was to have general referral required where you have to provide, if you're going remove yourself from the therapeutic relationship, it's an ethical code of all practitioners that you have to be able to provide for that patient. You have to give a period of time where that patient can go look...and this happens all the time. But a specific referral, for example, if somebody wants a procedure done that's morally repugnant to me, to ask that physician to shop for that patient and find a provider who does that procedure is a violation of that physician's conscience. That... [LB564]

SENATOR LATHROP: This is not limited to elective procedures. Would you agree with that? [LB564]

CLYDE MECKEL: This particular bill? [LB564]

SENATOR LATHROP: Yeah. It's any procedure, period. [LB564]

CLYDE MECKEL: This bill is supposed to apply to physicians in most situations except for life and death emergency situations. [LB564]

SENATOR LATHROP: Okay. Well, let's talk about that. Where's the life and death standard in here? Here's the concern I have, I'll just tell you, is that as I read the amendment it basically or generally says that if you have an objection, that you lean over the patient and you tell them, I can't do this because I have a moral or a conscience objection; and you can leave the room. I don't see where you have to find them a different doctor or that you have a duty to provide care if it's going to harm the patient. Now my question to you is, is there a provision in here that you can direct me to that suggests that you as a doctor with a conscience objection have a duty to make sure the patient doesn't get hurt in the process? [LB564]

CLYDE MECKEL: I don't have the bill in front of me, but the bill, is the way we intended the bill...oh, Section 7. "If a health care provider declines to participate in" the function "that violates his or her conscience, he or she shall explain to the patient or the patient's representative the reason for declining to participate. Nothing in the Health Care Conscience Act shall relieve a health care provider from any duty otherwise existing to inform his or her patient of how the patient may access another health care provider or health care facility." And it's in our ethical code and most...I'm assuming in most other ethical codes of other types of providers, we have to... [LB564]

SENATOR LATHROP: Here's my... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CLYDE MECKEL: ...if we extract ourselves from a relationship... [LB564]

SENATOR LATHROP: Here's my problem with that or here's my... [LB564]

CLYDE MECKEL: ...we have to provide for that patient. We have to give a period of time. Patients...we have to...we sever relationships with patients all the time for other reasons that are not ethical reasons; for whatever reason, they're inappropriate staff or whatever. [LB564]

SENATOR LATHROP: And I don't blame you for doing it either. [LB564]

CLYDE MECKEL: But I mean, if we have to, but we have to have a period of time. We can't just say, we're done, we're walking out of the room. That isn't how it works. [LB564]

SENATOR LATHROP: Well, that's what the bill does. Okay? And if you're telling me that you would incorporate that duty to provide for the patient and not walk away and incorporate in here, you'd probably lose a lot of the opposition you're going to see today. Because the bill doesn't say that. This becomes law and so we have the law and we have your ethical duty, right? But this becomes the... [LB564]

CLYDE MECKEL: The general referral paragraph... [LB564]

SENATOR LATHROP: This becomes the...it trumps your regulations. [LB564]

CLYDE MECKEL: The paragraph requiring referral, if somebody can help me find the...what section it's in. But the general referral paragraph... [LB564]

SENATOR LATHROP: Well, maybe you can tell me or you can slip a note to me if there's... [LB564]

CLYDE MECKEL: I can do that. But that actually is something that the NMA felt very strongly about,... [LB564]

SENATOR LATHROP: I would think so. [LB564]

CLYDE MECKEL: ...that we had to... [LB564]

SENATOR LATHROP: I would think so. [LB564]

CLYDE MECKEL: ...that we had to provide. We could not just, poof, which is what you're saying. And so the general referral paragraph in here I need to get back with Dr. Michels and others and... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: I have to tell you...I have to tell you I think you read the only thing that I saw in this entire amendment that deals with referrals, and it is just to tell the patient I don't do this. [LB564]

CLYDE MECKEL: We have a general referral paragraph. I've got to go...I got to...I will check on that because that is supposed to be there. We...this is...again, I don't draft bills. It's a...but that's something that we in the NMA resolution we went around about that and... [LB564]

SENATOR LATHROP: I read the NMA resolution... [LB564]

CLYDE MECKEL: ...that has to be there. [LB564]

SENATOR LATHROP: ...and I would agree, which made the letter seem inconsistent because I didn't see where all of the criteria and the resolution was found in the bill. [LB564]

CLYDE MECKEL: Um-hum. Well, certainly if that's the case, we need... [LB564]

SENATOR LATHROP: Okay. [LB564]

CLYDE MECKEL: ...that's...I'm open to that. That's...because that has to be there. [LB564]

SENATOR LATHROP: Maybe somebody else has an explanation. Thank you. [LB564]

SENATOR COASH: Senator Lathrop. [LB564]

SENATOR LATHROP: Senator Coash. [LB564]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Doctor. And I'm going to pick up where Senator Lathrop left off. In that section that you were just talking about, it references that nothing in this act shall relieve a provider from any duty otherwise existing. So I want to dig into that "duty otherwise existing." Does your medical license require you to provide care in an emergency situation? [LB564]

CLYDE MECKEL: Correct, it does. [LB564]

SENATOR COASH: With that, would your license...and you have duties under the license that you're issued. [LB564]

CLYDE MECKEL: We have duties under the license. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR COASH: Okay. [LB564]

CLYDE MECKEL: We also have duties under our board certification, which is somewhat separate to the license where we have...we're certified by the American Board of Internal Medicine, for example. [LB564]

SENATOR COASH: Okay. So do those duties under your license constitute your...Do they mandate that you provide care in an emergency situation? [LB564]

CLYDE MECKEL: Correct. [LB564]

SENATOR COASH: They do? [LB564]

CLYDE MECKEL: Yes. I mean, we...I mean... [LB564]

SENATOR COASH: You couldn't...I mean, if somebody is bleeding, comes to you for help and their life is in danger... [LB564]

CLYDE MECKEL: No. [LB564]

SENATOR COASH: ...you can't walk away, right? [LB564]

CLYDE MECKEL: No, no. [LB564]

SENATOR COASH: So is...I'm wondering if in the drafting on this "duty otherwise existing," I'm thinking maybe the existing duty is delineated in your medical license. [LB564]

CLYDE MECKEL: Medical license, ethical code for your boards, American Board of Internal Medicine, American College of Cardiology, American Association of Family Practice. That's in...there are codes, the AMA medical code of conduct. [LB564]

SENATOR COASH: Okay. But those codes of--and I'm learning about this--but the codes of conduct, you know, the ethical codes are different. Is it different than your requirements under your license, because the license is regulated by law? [LB564]

CLYDE MECKEL: Well, the license is regulated by the state Board of Medicine and Surgery. [LB564]

SENATOR COASH: Right. [LB564]

CLYDE MECKEL: That state Board of Medicine and Surgery recognizes the AMA code

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

of ethics as one of its blueprints, one of its standards that it goes by. [LB564]

SENATOR COASH: Okay. [LB564]

CLYDE MECKEL: So it just...does that make sense? [LB564]

SENATOR COASH: Does that... [LB564]

SENATOR LATHROP: Well, the problem I have with what you just said, Senator Coash, is that you didn't finish the sentence. Where it says the "duty otherwise existing," there's not a period there. It says "...to inform his or her patient of how they may access" other care. It doesn't incorporate all of this other ethical duties that you may have by virtue of your regulations and things of that sort. If you're willing to put it in here or if you...if it's just a drafting omission... [LB564]

CLYDE MECKEL: I will be quite frank with you is that we thought general referral is supposed to be in here... [LB564]

SENATOR LATHROP: Wait a minute. No. This is... [LB564]

CLYDE MECKEL: We want it to be in here. [LB564]

SENATOR LATHROP: I get the referral piece. This is about providing care to a patient and whether you can walk away from the patient. This bill, as it stands, would permit a care provider to walk away from a patient. If that's what you intended, it does that well. If you intended to be bound by every other duty that the law would impose on you to provide care, then that... [LB564]

CLYDE MECKEL: Correct. [LB564]

SENATOR LATHROP: ...needs to be in here. [LB564]

CLYDE MECKEL: Correct. And oh, I would agree with that. And then I would agree with provide...we would continue to provide care. And if that patient could not find a provider, if it's an in-patient setting, acute care setting, if...we would continue to provide care, I would and the physicians would be required to, under their ethical system, provide care to that patient until other care could be arranged. [LB564]

SENATOR LATHROP: Okay. [LB564]

CLYDE MECKEL: So, you know, walking away from a patient is not an option under anybody's... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: All right. I...because...I'm relieved to hear that. What should be the standard? If the patient would be injured at all, if their care should be compromised, what should the standard be before you can stop providing care? [LB564]

CLYDE MECKEL: Stop. Before we can stop? [LB564]

SENATOR LATHROP: Yeah. If you're in the middle of a procedure or you find yourself in a procedure and now you have a conscience objection, and it's hard because we don't have a list of the procedures that might provoke this exercise of one's conscience, but at what point can you...or are you obliged to find... [LB564]

CLYDE MECKEL: In the middle of a procedure, I am not seeing where a physician can start a procedure... [LB564]

SENATOR LATHROP: Well, what if you're...this isn't just doctors. [LB564]

CLYDE MECKEL: ...and then all of sudden say, whoops, I decided I have a conscience objection. I don't see that. [LB564]

SENATOR LATHROP: Okay. [LB564]

CLYDE MECKEL: I'm having a hard time seeing that. [LB564]

SENATOR LATHROP: All right. What...and maybe we ought to have a list of the procedures so that we can have a hypothetical. But there are some people that don't believe in blood transfusions. Is that true? [LB564]

CLYDE MECKEL: The blood transfusion issue I would like to address specifically... [LB564]

SENATOR LATHROP: Well, would that be... [LB564]

CLYDE MECKEL: ...because that's been raised. [LB564]

SENATOR LATHROP: ...some people's conscience objection? [LB564]

CLYDE MECKEL: Well, there may be physicians, for example, that...I'm not one of them, but there may be physicians of a certain religious tradition who do not believe in blood transfusions. For example... [LB564]

SENATOR LATHROP: Okay. And what if a patient needs one of those emergently? [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CLYDE MECKEL: If a patient needs one of those emergently, that physician would be obligated if he can't find somebody else to do it and that patient needs it. In an emergency situation I think he would be obligated to provide that transfusion. [LB564]

SENATOR LATHROP: Okay. And whatever this amendment requires to accomplish that, you would be comfortable with. [LB564]

CLYDE MECKEL: I would be comfortable with that. Correct. Again, I'm speaking for... [LB564]

SENATOR LATHROP: Okay, good. Thanks. [LB564]

CLYDE MECKEL: ...speaking for me. But the other blood transfusion issue, I think... [LB564]

SENATOR LATHROP: Thank you, Doctor. Senator Chambers. [LB564]

SENATOR CHAMBERS: I had said if something provocative was said then I would participate, and I also said I wanted to hear the Nebraska Medical Association's position. And you're articulating that position if I understand you? [LB564]

CLYDE MECKEL: No. I am not speaking for the NMA. Dr. Michels is specifically the NMA spokesman. I am a member of the NMA but I don't want to put myself in... [LB564]

SENATOR CHAMBERS: I will ask you and it will tip him off to where I'm going. I want to read from this amendment. On page 2, subsection (3)...(1) first. That would be on line 7. "Conscience means the religious, moral, or ethical principles held by any health care provider." We don't know what "moral" means. We don't know what "ethical" means. We don't know what "religious" means. Some people say that atheism is a religion. Pantheism is a religion. Some people say, well, it's a relationship of a person to a god, so it means different things to different people. Moral could be a word that relates to a code or a system of values held by some but not by all. [LB564]

CLYDE MECKEL: Correct. [LB564]

SENATOR CHAMBERS: For example, some people believe that it's morally not only right but a duty to have sex with children, and there are organizations like that, and they advertise on the Web. That's their moral belief. Others say that's immoral, even criminal. Ethical, the same thing. These are elastic terms that mean different things to different people. But I want you to see that that opens a wide range of reasons to not do certain things. Then I'm going to subsection (3) and I'm reading directly from the bill. "Health care function means any"--I emphasize any--"phase of patient health care, treatment, or procedure, including, but not limited to,"--that's the elastic clause--"diagnosis or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

prognosis, instruction, patient referral, prescribing, dispensing, or administering any device, drug, or medication, research, counseling, surgery, testing, therapy, or any other care or treatment rendered by a health care provider or a health care facility." Now I'm going to turn to the next page, Section 4, in line 7. And you'll see why I'm not going to be asking a lot of questions because people are going to be jumping around and saying it means this, it means that. I'm reading exactly what the bill says. "A health care provider has the right not to participate in any health care function that violates his or her conscience. No health care provider shall be required to participate in any health care function that violates his or her conscience." So a healthcare provider can say, I'm not doing any of these things but I want to be on the staff; and if you tell me I can't be on the staff and I'm not going to perform any of the functions that you have here, you can't put me off the staff because it's based on my conscience or my ethical belief; and if you try to put me off I can take action against you. [LB564]

CLYDE MECKEL: There's an employment protection piece to this bill that I believe addresses that very concern, and went round and round. That was another...one of the...several things happened since last year, one of which is the referral piece, and the other is the employment protection piece. For example, the last thing we wanted to do is to create a situation where somebody could vandalize a healthcare organization or somebody delivering some type of healthcare by sending a bunch of people in to work for them and then say, whoop, I morally object. There's an employment protection piece in here that I think addresses that very concern. That concern was brought up by physicians, not just by you, Senator Chambers, about the... [LB564]

SENATOR CHAMBERS: Well, I've read what the bill says. So maybe when the person representing the Nebraska Medical Association comes, he can show me where there's something in the bill that goes against what I read. And as I stated, I read it so he would be tipped off and he can be getting himself ready to counter what I read from the bill. I'm just presenting exactly what the bill says. [LB564]

CLYDE MECKEL: I actually agree with...I actually agree with the broad definition of healthcare, because to define healthcare and what we do, those are the kinds of terms that are...that make sense to me. I also agree with the broad definition of moral, religious, or ethical principles, because I think that conscience or right of conscience doesn't require one to be religious and it should not require one to be religious. This should not be a religious argument. This should be an argument about conscience. Much of what you brought up in your historically, earlier, before... [LB564]

SENATOR CHAMBERS: But what about the Section 4? And I read those things to show you the wide range of reasons, the wide basis a person has for refusing to do anything. I'm going to read it again. "A health care provider has the right not to participate in any health care function that violates his or her conscience." And conscience is based on a religious, moral, or ethical principle, whatever those words mean. So this person can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

say, for ethical reasons I will not participate in any of these things that are done under these circumstances, and you cannot take any action against me. No agency of the state can take action against me for not doing any of those things, and my license cannot be menaced and I can have a cause of action if you try to do anything to me. See, Doctor, you're talking about what you think, what you feel, what ought to be. That's why I read to you from the bill, and I hope that the Nebraska Medical Association representative will deal with it. I'm not asking that you go through all these things. You're not speaking for the organization, so if you want to give your view of what ought to be, that's not a problem. I want to find out what the medical association's position is on this bill, since they're supporting it. [LB564]

SENATOR ASHFORD: Okay. [LB564]

CLYDE MECKEL: We could certainly do that. I can tell you that the... [LB564]

SENATOR ASHFORD: Is there somebody here from the Nebraska Medical Association? [LB564]

CLYDE MECKEL: Dale talked already. [LB564]

SENATOR ASHFORD: Oh, I thought you said AMA. Well, I know Dale talked...he talked about the... [LB564]

CLYDE MECKEL: And I think that there's an employment protection piece here, specifically, the employment protection that was written in the bill was to address some of that very issue. [LB564]

SENATOR ASHFORD: Is the... [LB564]

SENATOR CHAMBERS: Excuse me, one second. [LB564]

SENATOR ASHFORD: Go ahead, Senator Chambers. [LB564]

SENATOR CHAMBERS: I've got a bill coming up in Government and that's why I have to leave now. [LB564]

SENATOR ASHFORD: Okay. Do we have any other questions... [LB564]

SENATOR CHAMBERS: So, Doctor, if you want to escape my withering questioning, you can do it while I'm gone. [LB564]

SENATOR ASHFORD: Do we have any other questions of this person? [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR SEILER: I have one. [LB564]

SENATOR ASHFORD: Yes, Senator Seiler. [LB564]

SENATOR SEILER: Doctor, in your written testimony you talk about the primary battle in which conscientious rights are seriously threatened today in our health system. Are you talking about federal or are you talking about state or both? Regulations? [LB564]

CLYDE MECKEL: Both, but mostly at the federal level. I mean this really came to the fore with...in January 2009, the Executive Order... [LB564]

SENATOR SEILER: Can you give us an example of the federal law that's going to create a problem for you as a physician with your... [LB564]

CLYDE MECKEL: Yes. The federal law, as articulated much more effectively than myself earlier, is the federal laws that are there to protect conscience are not given...you're...there's not relief individually and there's not relief for the individual to go say, hey, my conscience is being violated. It depends on the U.S. Department of Justice, or whoever, to go...to decide that it's a major issue. Now the previous administration had an Executive Order that was rescinded in January 2009 that basically went a long ways. And what's in this bill that we're asking for today is way less broad than what was the law of the land prior to January 2009. We've put in employment protection, referral protection, things like that. What was in...what was rescinded in January 2009, I wouldn't be here talking today if that hadn't been rescinded. So from our standpoint, that act being rescinded caused a lot of this. And then issues have come up around the country, as discussed earlier, the issues with pharmacists, issues with psychologists, and so forth. [LB564]

SENATOR SEILER: Okay. [LB564]

CLYDE MECKEL: The...so. [LB564]

SENATOR LATHROP: I have to ask one more question because I'm not sure your understanding of the bill is consistent with what I'm reading. And so your understanding of the provision or your wish in the bill would be to have a protection so that a number of care providers can't infiltrate a business, a healthcare facility, and then all of them say, I don't do this. [LB564]

CLYDE MECKEL: Correct. I mean there's a mission of the...it has to be consistent with the mission of the organization. There's an employment protection paragraph in here that I think that... [LB564]

SENATOR LATHROP: I...as I read that employment protection paragraph, it protects

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

the employee who has an objection but it doesn't protect the organization from having everyone in there at one time say I don't do this, and essentially shutting down an organization. But you would put that in there... [LB564]

CLYDE MECKEL: Myself. [LB564]

SENATOR LATHROP: ...as part of the NMA's support. [LB564]

CLYDE MECKEL: Well, again I don't speak for the NMA. I want to say that again. [LB564]

SENATOR LATHROP: Okay. All right. [LB564]

CLYDE MECKEL: But from my own...I mean, I think that... [LB564]

SENATOR LATHROP: That's what you thought was in there. [LB564]

CLYDE MECKEL: ...the employment protection piece is that they have to give due notice. There's a due notice clause in there... [LB564]

SENATOR LATHROP: Here's the problem... [LB564]

CLYDE MECKEL: ...that has to be in there. [LB564]

SENATOR LATHROP: Here's the problem, and a lot of people here know that I've spent some time with this subject matter. Here's the problem. If I am someone with a conscience objection and I happen to be Catholic and let's say I have an objection to something that's consistent with my faith, and I go to the boss and I say, I can't do this because I'm Catholic and I'm the only guy that could. Sometimes I'm there alone at night and it has to be done. I can't be fired now because it's against the law to discriminate against somebody on a basis of their religious beliefs, right? [LB564]

CLYDE MECKEL: Um-hum. [LB564]

SENATOR LATHROP: And it would be against the law to have me leave under this bill. It's a fine line between accommodating that and letting somebody provide the kind of care or do the things that they do, and I don't see where the employer who hires the care workers has any protection whatsoever in here. It's all the individual person. So if that's what you intended or you're intended these protections... [LB564]

CLYDE MECKEL: Well, I think that we intended...we intended there to be...that this was...we intended the employers to have some degree of protection from exactly what we talked about. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: Okay. [LB564]

CLYDE MECKEL: And it is very difficult, and we talked about that before too. You can't go interview somebody and say, oops, you're Catholic. You know, sorry. Oops, you're Muslim; oops, gone. You're...you know, I mean, that's not allowed either. [LB564]

SENATOR LATHROP: Right. [LB564]

CLYDE MECKEL: And oh, by the way, if you're Catholic but you really don't hold...but if you're willing to check your conscience at the door, we'll take you. [LB564]

SENATOR LATHROP: Right. Okay. [LB564]

SENATOR ASHFORD: Yes, Senator. [LB564]

SENATOR DAVIS: So, Doctor, if I was an employer and I asked you, prior to hiring you, what your position was on a particular issue and you gave me an answer, would I be obligated to hire or would I be able to say, no, I'm not going to hire you? [LB564]

CLYDE MECKEL: Position on an issue? No, I mean, I think if I...if I applied for a job at Planned Parenthood and objected to participating in anything that had to do with abortion, they shouldn't be required to hire me. If I...to make others. I mean, you can think of other examples but that's the example that seems the easiest. If I was a...if I objected to plastic surgery then I shouldn't go to an outpatient surgery that has five plastic surgeons on staff. Pretty good chance they're going to be doing some plastic surgery. [LB564]

SENATOR DAVIS: Well, I agree, it makes sense. But from the employer perspective... [LB564]

CLYDE MECKEL: From the employer perspective then it makes total sense because of employment law and discrimination law. I mean, I think that that has to be...I mean, the employer has to be protected in that way. [LB564]

SENATOR DAVIS: Um-hum. [LB564]

SENATOR LATHROP: But he can't ask ahead of time. [LB564]

CLYDE MECKEL: He can ask about whether somebody has a problem with their mission and lay their mission out. Here's what we do here: We do procedures A, B, C, D, and E; do you have a problem with this? Not about religion. This is about do you have problems doing A, B, C, D, and E. Here's the job description. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: I think that employer would get sued for religious discrimination. [LB564]

CLYDE MECKEL: This is about A, B...this is about procedures; this is not about religion. You're not asking them what their...I'm not asking them if they're Catholic, how many times they go to church, what do they do. This is about the procedures they do. That employer should be able to say, hey, this is our mission here; this is what we do. [LB564]

SENATOR DAVIS: Well, I agree. [LB564]

CLYDE MECKEL: If you want to come to work for me, this is what we do. That's my intent. I mean, this is to protect everybody. This is...I think physicians need this protection. I think we need this protection. I think there's a healthcare shortage, a physician shortage coming, and you don't want to drive physicians who have a certain conscience out of medicine. You've already got a shortage coming and it's going to be big. And there's people that will leave medicine over this, the issues that are coming. And they're coming. [LB564]

SENATOR LATHROP: I get it. But as soon as that person says I can't do that, I'm Catholic, and then they don't get the job, that employer is going to get sued. I know that the hospitals are here and maybe we'll hear the perspective of the employer. I get what you guys are trying to do. I really do. I understand it completely. But there are a lot of...there's a tension there, I think, between discriminating against people based on religion, which is prohibited,... [LB564]

CLYDE MECKEL: Correct. [LB564]

SENATOR LATHROP: ...and it gives rise to a lawsuit so an employer can get sued if they do that, and all of the conscience...accommodating of the conscience and...I mean, I tried to work on an amendment last year that would do that, and we've gone a different direction with this approach, and I don't think it's giving fair consideration to the employer who doesn't want to get sued for violating somebody's...based upon religion, because all I have to do is blurt out, I'm Catholic, and bam, now we've got a lawsuit if you don't hire me. [LB564]

CLYDE MECKEL: Well, the question of religion doesn't...I mean, they can volunteer that but the question of religion doesn't have...it should never be asked whether they're Catholic, whether they're Protestant, whether they're whatever. But they should ask, do you have a problem with performing these functions, yes or...you know, this is our mission here; this is what we do. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: But the conscience means the religious, moral, or ethical principles. So it includes religious. [LB564]

CLYDE MECKEL: No. It can be religious. [LB564]

SENATOR LATHROP: I don't...now I'm taking up people's time and I don't want to cut into the folks who want to testify as proponents, so. [LB564]

SENATOR SEILER: Steve, you might take a look on page 6, line 20. It comes close. [LB564]

SENATOR LATHROP: Except that that's not a precondition to exercising their right. [LB564]

SENATOR SEILER: That's right. But that's as close as this bill comes to what you're asking. [LB564]

SENATOR ASHFORD: Senator Christensen. [LB564]

SENATOR CHRISTENSEN: I want to go back to Senator Lathrop made the comment, only being one doctor on staff and you object to doing something, it's an emergency. If it's an emergency, you've got to do it by the code of ethics anyway. If it isn't an emergency then you can refer. So I guess where did I miss that in your question, Senator Lathrop? [LB564]

SENATOR LATHROP: The code of ethics are not incorporated into this bill. [LB564]

SENATOR CHRISTENSEN: That's fine. But I think that's been discussed of making sure... [LB564]

SENATOR LATHROP: This trumps the code of ethics. As a law this would trump the code of ethics. [LB564]

CLYDE MECKEL: I don't necessarily...I'm not sure I agree with that only because this law specifically states...the amended bill specifically states that this does not immunize the physician or healthcare provider from being investigated under discipline by the Board of Medicine and Surgery, if it's a physician, or whichever governing agency you're talking about. And that Board of Medicine and Surgery has as its codifying standard the code of ethics of the AMA for physicians, and to speak as a physician here. [LB564]

SENATOR ASHFORD: The state law would dictate that point. I think that's what Senator Lathrop has said, there's no question. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CLYDE MECKEL: Yeah. But the state law says that the Board of Medicine and Surgery has say, and the Board of Medicine and Surgery says the code of ethics of the AMA is what they go by. [LB564]

SENATOR LATHROP: I can tell you this would change the standard of care and your ethics would be subordinate to what we put into statute, and what we put into statute trumps your ethics. This becomes the new ethic. [LB564]

CLYDE MECKEL: Um-hum. Was this a problem do we think before 2009? [LB564]

SENATOR ASHFORD: I don't think...Doctor, I think the question is we're trying to understand what it is you want us to do here. [LB564]

CLYDE MECKEL: Yeah. And I think...I understand. [LB564]

SENATOR ASHFORD: No, no, that's...and we're not arguing...I'm not arguing with you, but I think what we're trying to understand... [LB564]

CLYDE MECKEL: And I apologize for not being as...I went to med school. [LB564]

SENATOR ASHFORD: Well, just a second. What I...I mean, you're answering these questions concisely and properly as you see them. And I have no difficulty with that, but I think what we're trying to understand is, is you know, when you start balancing out the risks here, you talk about...excuse me, Senator Lathrop, but... [LB564]

SENATOR LATHROP: No, I'm done. [LB564]

SENATOR ASHFORD: You talk about in the bill it's pretty clear, you define conscience pretty broadly. I mean, someone can declare they have a conscience objection to doing X or Y, and I get that, what you're saying, what you want. But you're in a...I think what many people have a lot of problem with is trying to grapple with this. As you're dealing with a profession that by its nature is healing people, and essentially that's what you do, so when we start to draw lines in statute about what you can or can not do or what you can be...you can elect not to do, if it heals somebody and makes them better and you can declare, even if it's not life and death, and I'm just telling you what my concern is, you're in the business of making people better. You know, if it's an elect...even if...you know, if it's some kind of...an emergency that occurs, you have to do something that moment, I get that exception. I understand what you're getting at there. You have to do it if there's nobody else around to do it. I get that. But then there are a whole series of other things that have to do with healing, making the people feel better, making them better. You know, whether it's dealing with cancer or dealing with all these various other diseases that we have, you know, I think it's sort of...I think what I'm having difficulty getting my arms around is we have the science out there that your profession has been

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

so adept at, to find cures for all these things that we didn't have 20 years ago or 30 years ago or whatever when Senator Seiler and I were younger, that you kind of took a pot shot at stuff. But now your profession has done amazing things. I mean, you've created cures for lots of things that we didn't have before. So your profession is centered around...and we have an interest in that in this state because we funded \$50 million for the Cancer Research Center last year. We have an interest in making people better. We have an interest in funding physicians and researchers and their ability to heal. We provide facilities at the university to help heal people. So I think what's...you know, this is kind of...again, it's...I know what you're asking for. I get it. And my response back...and I understand why you're asking for it. I understand it's heartfelt. I get it. But from my...I look at it from the perspective of how far we've advanced as a people and because of what you've been able to do as a profession. It's amazing to me. And I know my father-in-law, Randy Ferlic, did the first heart transplant operation in Nebraska. I mean, had he not done that, maybe somebody else would have, but I mean it was pretty miraculous work. And then...and I get...and I understand why you have conscience objections to certain...or why...I don't know why. But I understand that you have, like everybody has a conscience and values, moral values that you want to apply in your everyday life. I get that. But they seem to be running up against each other in a bit...in a bit...in a way here. And that's what I'm having a hard time grappling with, because you can...what I'm wrestling with is you can make that patient better. You can do it. And short of abortion and that's already in the law and there may be other few things, short of that that's why we give you a license. That's why we fund your research. That's why we do all those things. And now...and I'm not arguing with you. I'm just telling you how I feel. And now you're coming in and saying I've got a conscience...I...I don't know you, but a physician may have a conscience objection and doesn't want to do anything other than deal with a life or death situation. It just doesn't...to me, it doesn't flow together. It...go ahead. [LB564]

CLYDE MECKEL: I'd like to answer that if I could. I know we're a little over time. [LB564]

SENATOR ASHFORD: I didn't really ask a question but you can certainly respond to what I'm saying. [LB564]

CLYDE MECKEL: But I certainly want to respond to that. In the bottom line, when it's all said and done, this is not about the physicians. This is about the patients. [LB564]

SENATOR ASHFORD: Well, I think it's about the patient, isn't it? [LB564]

CLYDE MECKEL: Okay, this is...we're here about the patients. [LB564]

SENATOR ASHFORD: Right. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CLYDE MECKEL: And I'm not a bill writer. I don't read bills. This is the first bill I've read in 20 years. [LB564]

SENATOR ASHFORD: I'm talking about what...forget the bill. Forget the bill. Just tell me what you think. [LB564]

CLYDE MECKEL: Okay, but here's what...here's what I really think. We're about patients. To do what you're suggesting, to have all the miraculous things we've done, the cancer research. I'm in heart disease. I mean, look where we were. I mean, people died...people were sent home with MIs to die 30 years ago, and it hasn't been that long ago, four decades ago anyway, but to do those things and to do all the other science that we do, medicine is not a science when it really comes to it. We use science to guide our therapies. But when we...I'm going to ask this committee on all sides of the political spectrum to think about when we... [LB564]

SENATOR ASHFORD: This is not politics. I swear to God, this is guttural stuff. This is how we look at the world. This is how we view...how I think...how individual citizens view the medical profession. I think they view them as special, up on a pedestal, incredible people. That's how I would sense...and I just don't...that's how I think we view you. [LB564]

CLYDE MECKEL: Well, I think that...if I can just state what I think the issue here is, is that this is about patients. This is not about us. This is about how to...and over the period of time, not just right now, not just a snapshot, in order to do that a lot of these things you talked about to make a patient better, you say we can do things to make patients better, some of those are just scientific. It's like, you know, what chemotherapy for cancer or what bypass surgery for heart disease. But many of them are not. And many of the things we do require a physician to sit down with a patient and ask them very sensitive questions about their social life, about what they do when they're not at work, things that they wouldn't tell anybody else except with a physician when they're in the exam room. And in order to have an effective physician-patient relationship, that physician cannot be deconstructed where he is forced to act outside of his ethical system. [LB564]

SENATOR ASHFORD: Well, what would be...what would be forcing a physician to act outside their ethical boundaries to ask patients about certain things? [LB564]

CLYDE MECKEL: Well, no, what I'm saying is, is that for a patient to trust a physician to tell them intimate details about his or her life, embarrassing things, illegal things maybe, or whatever, to... [LB564]

SENATOR ASHFORD: And you have a privilege by law anyway. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CLYDE MECKEL: Yes. But I'm saying that in order to trust that physician, you want an ethical, grounded physician who practices within his ethical system to care for you. [LB564]

SENATOR ASHFORD: Right. [LB564]

CLYDE MECKEL: If a physician...if we select out physicians who are willing to check their ethical system at the door, that trust can go...that trust will be endangered and the patient will suffer. [LB564]

SENATOR ASHFORD: But what ethics are we talking about? Because I would...if...you know, what ethics...I mean, this is a very interesting conversation, because this gets into the... [LB564]

CLYDE MECKEL: This is the heart of the matter. It's not about me. This is about patients. This is about me in 30 years from now. [LB564]

SENATOR ASHFORD: This isn't about the bill. This is about why people are doctors and the relationship between doctors and physicians, it seems to me, in a society like ours where we rely upon physicians so much. And physicians are...have proven to a great degree that reliance is appropriate. It...I mean, we rely on you to help us get better. We rely on you to... [LB564]

CLYDE MECKEL: And you trust us. [LB564]

SENATOR ASHFORD: That's right. [LB564]

CLYDE MECKEL: You want to be able to look me in the eye, if I was your physician, and tell me something terrible about what's going on in your life and know that I'm looking out for you in a covenantal relationship, and I care about you within my ethical system, and I don't check my ethics at the door, because once I check my ethics at the door all bets are off. You can have all the regulation you want to talk about... [LB564]

SENATOR ASHFORD: Okay. I just don't see how...I don't see how this...I don't see where the harm is to physicians to say, look, I just...you're talking about a conversation about...that leads up to treatment, let's say. That's what you're sort of alluding to, right? Or some other conversation. [LB564]

CLYDE MECKEL: Could...yeah. Or recommendations, treatment, ongoing...yeah. [LB564]

SENATOR ASHFORD: And there's some conscious thing that says I can't talk to you about what? What's an example that I can't talk to you about? Or me about what...if I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

come to you and I say I'm...you know, I have this condition or I need help or...what is it that...what might you be objecting to or not wanting to do? [LB564]

CLYDE MECKEL: Well, if you're 85 years old and I'm being incentivized by how good the health system does, and you're 85 years old and you have prostate cancer and metastatic to four or five places, how much money do I want to spend on you? [LB564]

SENATOR ASHFORD: Well, can't you say that to a patient and say here are your options? We can treat this but in all likelihood it's not going to prolong your life? I mean, isn't that something you would say to a patient anyway? [LB564]

CLYDE MECKEL: Well, there are certain options for patients but how those options get presented to patients can depend on whether that...how...and the physicians are getting pulled in a lot of directions all the time. More and more all the time. [LB564]

SENATOR ASHFORD: See, I grant you...see, I think you're right. I think physicians...I think what's really happened is I think hospitals have created a situation where it's very difficult for physicians, and you're placed, and I have a great deal of concern about that and about how...but aside from that issue, which is economic to some degree, but I'm just trying to understand...I want to understand, I really do want to understand why we should pass a law, because...and that's why I'm asking these questions. But I think I've prolonged the conversation enough. But let's get on to some other testifiers. I appreciate your candor. [LB564]

CLYDE MECKEL: Thank you. [LB564]

SENATOR ASHFORD: Yeah. [LB564]

THOMAS HEJKAL: (Exhibit 5) Senator Ashford, members of the committee, my name is Thomas Hejkal, H-e-j-k-a-l. I'm in support of LB564. I'm a physician, a professor at UNMC. I've been residency program director there for about 16 years, served on the curriculum committee, faculty senate; since 2009, chair of the Department of Ophthalmology, until today, that is. And my testimony today is my personal opinion. I do not represent UNMC or its administration. I think protection of conscience for healthcare providers is essential if we are to maintain the integrity of the health professions. Our healthcare professional must not be coerced to act against their convictions. I think it's also important that this legislation does not endanger patients, trump the rights of patients, or allow unscrupulous providers to make frivolous claims of conscientious objection for personal gain. I think these concerns have been adequately addressed in the current bill. If not, I think the NMA is in support of making those amendments to address those...to make sure that that happens. It's clearly this legislation would not allow a doctor to administer treatments against a patient's wishes. Some have suggested this legislation would negatively impact our training programs and potentially

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

affect accreditation status of medical schools. Throughout my career I've been involved in the accreditation process. I'm confident that this legislation will have no negative impact on medical education programs in this state. In fact, accreditation agencies have supported conscience protection in their policies. For example, the ACGME which regulates residency programs for OB and Gynecology, they state, "No program or resident with a religious or moral objection shall be required to provide training in or to perform induced abortions." They also say, "For those residents who do not desire to participate in any aspect of family planning training, the program must allow them to opt out of this experience." These are the sorts of things this bill will bring to not just the residency programs but to all providers. I've reviewed the accreditation standards for medical schools and their requirements...they have no requirement for medical schools to train students in any specific procedure or treatment. So this argument that this legislation would endanger an accreditation status because some students are not trained in all medical procedures, it's just not tenable. For example, no medical school is required to train students in techniques for capital punishment, and this legislation will protect students and physicians from being required to participate in such procedures. The LCME agency that accredits medical schools states that we must require our medical students to exhibit scrupulous ethical principles in caring for patients in relating to patients' families and to others involved in patient care. So we should expect our medical professionals to maintain these scrupulous ethical principles throughout their careers and we must support them in this effort by respecting and protecting their right to act in accord with their individual ethical principles. [LB564]

SENATOR LATHROP: Very good. Thank you, Doctor. Any questions? Senator Chambers. [LB564]

THOMAS HEJKAL: Yes. [LB564]

SENATOR CHAMBERS: Doctor, I'm not going to say you're naive but you are an expert in medicine. I was trained in the law and as I always say, the only thing Creighton hates worse than the fact that I graduated from there is that I tell people that I did. But when it comes to the law and people who draft this kind of legislation, and it is a kind of legislation and it follows a particular agenda and it's being pushed all over the country, if Senator Nelson doesn't know, I'm aware of it. When you put in threats of civil action for damages and these kind of punishments, that is known as the chilling effect pill. It's designed to make people think twice about whether something that before you as the teacher could have done or refrained from doing might say, well, maybe I shouldn't; maybe I should go a different way. But if you as this whatever title you use wouldn't be bothered by it, there might be others in a facility or who work for an accrediting agency of the state who would be chilled by it. And that's exactly why it's put in here. I don't think...now, I haven't read this carefully. I don't think anybody is stupid enough to think that the Attorney General is going to undertake the defense of individuals who say that they've been aggrieved because somebody told them you didn't perform a procedure

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

that we think you should. The Attorney General is not even authorized by statute to take those kind of personal individual cases. But that's the kind of thing put in this bill for the purpose of chilling and putting people in fear. So I'm going to ask you the question that I was asking the other gentleman, had you heard, I think, the parts that I read, so I'm just going to read Section 4. "A health care provider has the right not to participate in any health care function that violates his or her conscience." And if 98 out of 100 of the healthcare functions that are performed in a hospital violate his or her conscience, should that hospital be able to say, well, you can't be on the staff here? [LB564]

THOMAS HEJKAL: It seems like a very...almost impossible, situation that would occur with this. And I think my understanding of the legislation is that there are provisions for those sorts of situations that are taken into account later on in the bill. [LB564]

SENATOR CHAMBERS: Not in here. You cannot discriminate, and discrimination includes...and I'm not going to find all the places they put it, but demotion, denial of staff privileges. So if you are operating a hospital, and a person says, well,...and I'm giving a large number to show you how much it can be. Any procedure that violates their conscience, they need not perform, but there might be a benefit in being associated with your hospital. Johns Hopkins, they say, well, 92 of these 100 I cannot participate in because it violates my conscience. You have to let that person continue to have staff privileges. Were you aware of that being allowed by the bill? And if you don't, you're subject to legal action. [LB564]

THOMAS HEJKAL: I find that hard to believe that something like that would come up with this, but...and I know that's not the intent of this bill. So I...my impression is... [LB564]

SENATOR CHAMBERS: Doctor, you said you don't see that it might and you don't think. I have to look at what the bill allows. The people who wrote this bill knew what they were doing. They didn't say a healthcare provider has the right not to participate in any healthcare function that violates his or her conscience if such denial or refusal to participate is unreasonable. It's just a flat declaratory statement. "A health care provider has the right not to participate in any health care function that violates his or her conscience," and I've read off all of those things that qualify as healthcare functions. And in this bill you would be found to discriminate if...okay, let me turn to page 7. This is a long one but I will get down. I'll start in line 10. There is something in...okay, "...discrimination includes, but is not limited to, any denial, deprivation, or disqualification with respect to licensure, any form of aid, assistance, grant, benefit, or privilege, including staff privileges." That's discrimination. If this person and this person has a right to decline to participate in any of those procedures and you cannot take action to remove staff privileges or refuse to grant staff privileges simply because this person refuses to participate in 98 of the 100 of the procedures expected of somebody who has staff privileges. Did you know that was in the bill? [LB564]

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Transcriber's Office

Judiciary Committee
March 01, 2013

THOMAS HEJKAL: I saw that in the bill... [LB564]

SENATOR CHAMBERS: And you support that, don't you. [LB564]

THOMAS HEJKAL: ...but I also, as I read down further in the bill that there were other provisions to... [LB564]

SENATOR CHAMBERS: And you supported that. You were very strong in supporting the bill. [LB564]

THOMAS HEJKAL: Yeah, because... [LB564]

SENATOR CHAMBERS: And you still support it, right? [LB564]

THOMAS HEJKAL: ...there, I think there are other provisions in the bill that... [LB564]

SENATOR CHAMBERS: You still support this, though, don't you. [LB564]

THOMAS HEJKAL: I still support it because I think the other provisions in that bill account for that. [LB564]

SENATOR CHAMBERS: No, there's not any...there's nothing in the bill that takes that away. So UNMC, do they know that you're in agreement? Now, I don't know, are people granted staff privileges at UNMC? [LB564]

THOMAS HEJKAL: Not at UNMC. [LB564]

SENATOR CHAMBERS: Well, the hospital. [LB564]

THOMAS HEJKAL: At the hospital. [LB564]

SENATOR CHAMBERS: Yeah, at the hospital. I think of it as one complex. The hospital. Do you think that hospital should have to grant or let this person retain staff privileges if he or she has them who says I will not and I cannot because of my conscience participate...let's say 85 percent of the procedures that staff...that people with staff privileges are expected to participate in. You think that's all right, don't you. And you think hospitals can function with something like that. But let's put it up to 98 percent. How many hospitals could function like that? You've got these people who say, well, I don't want to do that. Then others are going to have to carry the load because this bill says that it is no defense against this legal action to say that the refusal to participate creates inconvenience, difficulties, or burdens on others. So they anticipate the fact that other people are going to be burdened by these requirements so they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

specifically said that it is not a defense to bring up the fact that this kind of action of refusing and declining would create burdens for others. [LB564]

THOMAS HEJKAL: Well, I agree that...and I stated in my testimony that I think we do need to... [LB564]

SENATOR CHAMBERS: Sit up, Doctor. You're kind of hunching now. You were very forceful. [LB564]

THOMAS HEJKAL: I'm trying to get to the microphone. [LB564]

SENATOR CHAMBERS: I read body language and you were reading without having to put your face right down to the paper. I think you're feeling a burden that you didn't feel at first. [LB564]

THOMAS HEJKAL: Maybe so. But I also agree that we need to make sure that we don't allow unscrupulous providers to make frivolous claims of conscientious objection. And my interpretation of the bill was that this will provide for that. [LB564]

SENATOR CHAMBERS: Your interpretation. Who are you to interpret? How are you to judge somebody else's conscience? See, that's the area we're in. That's what I touched on and people probably thought I was nitpicking when I said these terms are very broad. How are you going to determine that somebody is making an unscrupulous claim when they say it's their conscience? They are the only one who knows the content of his or her conscience. And if you get away from that, you're establishing what is known as an objective standard. We don't look at what the individual says he or she feels is ethical and allowable, but what would a reasonable person do in a situation like this. And if you go by the reasonable person standard, then that individual whom we're judging may in fact have his or her conscience violated. But because a reasonable person's conscience wouldn't be so violated, you can then violate that person's conscience and say, no, that doesn't stand up. There is no way to prove that what somebody says is not valid, scrupulous, or allowed under this bill. I told you, they close off the loopholes. You are an honorable man. You are an ethical man. This is a religious agenda. And when people would burn others at the stake for expressing an opinion, they will do anything. And whereas a person can refuse to participate in practices and procedures that violate their conscience, no facility can ignore this so-called pain to a fetus law. You've got to comply with that law even if your conscience tells you as a facility you shouldn't. So it depends on whose conscience is involved. So I hope that you will read this again and I'm glad you didn't say you were speaking for the Medical Center. Is somebody here who's going to speak for the Medical Center, do you know? [LB564]

THOMAS HEJKAL: I don't know. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: Oh, okay. That's all I have. [LB564]

SENATOR LATHROP: Thanks, Doc. [LB564]

SENATOR ASHFORD: Doc, just briefly. Just so I...and maybe I'm...again, I...reading parts of this. But getting back to Senator Lathrop's point just so we have it in the record. On page 8, 38-126 reads, "To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services," and then it lists a number of criteria that sets up the board and the ability to issue rules and regulations. And then it says in this bill, "All rules and regulations shall be subject to the Health Care Freedom of Conscience Act," which to me means that the health professions create a board to police the making sure that we have the kind of physicians practicing that...or health professionals practicing that will not injure the public. And then in the same breath we say, but if someone under the...you know, any provision of this Health Conscience Act would trump the work of these professional organization...or this professional board. And so I do think this would preclude those rules from being applied. I mean, that seems to be what it says. I don't know, maybe it doesn't mean that, but. Anyway, I appreciate your testimony. Thanks. Yes, Senator Lathrop. [LB564]

SENATOR LATHROP: No, I don't have anything. [LB564]

SENATOR ASHFORD: I mean, Senator Chambers. I'm sorry, Doctor. [LB564]

SENATOR CHAMBERS: Excuse me. Doctor, since I have been saying I wanted to read from the bill itself what I was talking about, I did find it, and I'm on the green copy because I haven't coordinated it with the amendment. But I don't think this part would have been changed by the amendment. On page 7, starting in line 4, this is what it says, "A civil action for damages or injunctive relief, or both, may be brought for any violation of the Health Care Freedom of Conscience Act. Subject to section 7 of this act, it shall not be a defense to any claim arising out of a violation of the act that such violation was necessary to prevent additional burden or expense on any other health care provider, health care facility, individual, or patient." So back to what I will say, this person whose staff privileges you cannot lift. You can...if you tell that person you lose these privileges and you explain, well, it's going to make more work for everybody else who is here, there are patients who have to be given treatment and they cannot be covered because we have a blank spot being held by this person who, in effect, is not a person when it goes to court. They turn to the law. "It shall not be a defense to any claim arising out of a violation of the act," and you would have violated it by lifting the staff privileges "that such violation was necessary to prevent additional burden or expense on any other health care provider, health care facility, individual, or patient." A burden, a harm even to the patient is not a basis for lifting the staff privileges of one who says 98 percent of the requirements I cannot comply with because of my conscience. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

said before you got here, this is crazy. This is insane. And I wrote it throughout the bill. This is a particular agenda and many people will be intimidated but not me. Not you. I think you just didn't read the bill. And I think you're reading it with a hopeful notion that it doesn't really mean what it says it couldn't. Intelligent, civilized people couldn't enforce this as it's written. Then maybe we're saying intelligent, civilized people didn't write it. And that's what I say. If they have the right, and they do, to present this and they can get some senators foolish enough to introduce it, then I'm going to say about it what I think needs to be said for the record, because the public needs to know somebody in this Legislature is sane and fearless and will protect even the medical providers who don't read this and understand what it's doing to them, and they will come up here and support it. But that comment about not having to teach these people that you're training about the procedures of capital punishment, we know that the first principle of medicine is what? First do no harm. So you cannot teach any of those people how to participate in capital punishment. So the examples that you give, we...they go without saying and don't even apply here because nobody is going to say that you have to do that. And if they do, you just tell them, well, I don't know where you came from but go back there, because you obviously have people who think just like you think, and birds of a feather flock together. But none of those birds hang out around here. And you are around here what we would call a rare bird, a rara avis. But anyway, that's all that I have, Doctor. [LB564]

SENATOR ASHFORD: Thanks, Doctor. [LB564]

THOMAS HEJKAL: Yep. [LB564]

SENATOR ASHFORD: Any other proponents? We're going to go for about...till about 10 after 3:00, 20 minutes. [LB564]

SENATOR CHAMBERS: And I hope that medical...that Nebraska Medical Association spokesperson is going to come up here. [LB564]

SENATOR ASHFORD: It's Dr. Michels. Well, we can ask him to come back. [LB564]

DAVID HILGER: Senator Ashford and committee, thanks for allowing me to be here. Hopefully I don't rehash some of the things, but I think my testimony is more, not being a lawyer, not knowing the rules, the importance of conscience protection. I'm a physician, specialize in radiology, private practice in Omaha, practiced radiology for 25 years. [LB564]

SENATOR LATHROP: Can you give us your name, Doctor? [LB564]

SENATOR ASHFORD: David, just give us your... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DAVID HILGER: Name is David Hilger, H-i-l-g-e-r, and I am the officer in the Omaha Chapter of the Catholic Medical Association, and I also served on the committee that drafted the resolution but I was not involved on any of the final drafting, but I know the intent. I would like to say that Martin Luther King said, "There comes a time when one must take a position as neither safe, nor politic, nor popular, but he must take it because conscience tells him it is right." This applies to all men and women of goodwill, including those in medicine. As physicians, we took an oath to do what is right for our patients. In order to accomplish this, we depend on this precious gift called conscience. I believe that conscience is not a gift but is an essential human right. This right is written into the First Amendment of the constitution. If this is the case, I will ask the question: Why am I here today and why are we here? And to address maybe what Senator Ashford says was his question, why we are here is because this right is at risk and is becoming eroded and this...we wouldn't need to be here but this erosion has begun first in the healthcare profession. It is more than erosion. It is an attack in the form of rules and regulations promulgated by a government agency that has the power to control the practice of medicine by financial means. We are here because our government has not provided the necessary support for this right, which is threatened by those regulations. This should not be a state reg...this should be...we should be protected. And as other people have said, there's been attempts to protect this right and they were rescinded in January 2009. That's why we're here. I'm not a legal expert. I cannot discuss the details of the erosion or attack, but to speak as a physician for conscience protection in the state of Nebraska. This protection is needed and necessary to protect the religious, moral, and ethical beliefs of medical providers. It's also to protect the rights of patients. Why is this? Because I believe the best physicians are those that have a well-formed conscience. Conscience is what we use when the science becomes unclear. It means that we are treating patients the same way that we would treat our friends and family. I have selected the physicians and advisors for myself and my family not only on the basis of their knowledge but because I believe that they will make decisions with good judgment and conscience. This is not something that can be defined by rules and regulations. Every person, every medical provider has a conscience. Our conscience is formed not only by our ethical, religious, and education, or nonreligious beliefs but it is also by our education and experiences. As physicians, we are capable of integrating all of this and use it to practice medicine with our best knowledge. I'm going to make it a little shorter. The threat to the right of physicians and patients is real. As an officer in the Catholic Medical Association, I receive personal questions from medical students and young physicians. By far the most common question and concern from students is whether they will be able to practice medicine according to their beliefs. This is not a fear of being able to practice according to their best moral and ethical judgment...it is a fear about being able to practice according to their best moral and ethical judgments. A fear they might also have...compromise their beliefs or face economic and personal hardship. This is fear...this fear is real and is a quiet form of discrimination. [LB564]

SENATOR ASHFORD: David, let me just...let's see if there's any... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DAVID HILGER: If you have time, I can give some examples. [LB564]

SENATOR ASHFORD: ...see if there are any questions. Senator Chambers. [LB564]

SENATOR CHAMBERS: Let me ask him a question or two and maybe in the process... [LB564]

SENATOR ASHFORD: He can go ahead and finish his comments. Okay. [LB564]

SENATOR CHAMBERS: Doctor, any statement can be made and standing alone it can be very noble. It can sound very humane. It can sound like it's advancing humanity. But then when you come to applying it, difficulties arise. Martin Luther King, who was opposed by the majority of white Americans, is now trotted out and dusted off to backup any and everything they said. When he made that statement about conscience, he wasn't talking about denying treatment and care to people who were ill and the one denying it is a person who is trained in medicine. He was talking about the civil disobedience that black people were engaging in, contrary to what they felt were unjust laws, but they were prepared to suffer the consequences, which meant jail. So if your conscience leads you not to conform to what the standards of the state set for one who practices medicine, then don't practice medicine. That's the price you pay for your conscience. There was a judge named Moylan and there were requirements in a bill that was passed by the Legislature related to abortion. There were certain requirements on a judge to notify and do other things. Judge Moylan said, my principles are so rigid on this issue, I will not and cannot comply with the law. And you know what he did? He resigned. So that's what...if you're that strong in your conscience, don't say you want to skew the medical profession; you want to put it over here where it no longer can be counted on to do the things that it has been taught to people it will do. You resign and leave the field open to those who can. But here's the question I'm going to put to you. Your conscience is yours; mine is mine. You heard the example that I gave to the last testifier. You know what staff privileges at a hospital are, don't you? [LB564]

DAVID HILGER: Yes. Yes. I want to just go back to something you said. [LB564]

SENATOR CHAMBERS: Okay. [LB564]

DAVID HILGER: Nobody is talking about denying care that harms patients here. [LB564]

SENATOR CHAMBERS: Say it again. [LB564]

DAVID HILGER: None...I'm not talking about any...we keep on referring to denying care that harms patients and I don't see where that comes from. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: Well, that's what this bill says, that all a person has to say is that I cannot participate in the providing of any medical procedure, and they list all of these things when it comes to granting care to a patient, and I cannot do it because it violates my conscience. That's in the bill. [LB564]

DAVID HILGER: Sir, I took a Hippocratic Oath that does not allow me to harm a patient. [LB564]

SENATOR CHAMBERS: Say it again. [LB564]

DAVID HILGER: I took a Hippocratic Oath that does not allow me to harm any patient. [LB564]

SENATOR CHAMBERS: Well, you're talking... [LB564]

DAVID HILGER: And that oath trumps everything for me and for all of us. [LB564]

SENATOR CHAMBERS: Then why don't we just go by the Hippocratic Oath and not put all this stuff in here? [LB564]

DAVID HILGER: Because we're faced with the situation where there's rules and regulations. Let me give you an example. [LB564]

SENATOR CHAMBERS: Well, instead of that, let me ask you my question. [LB564]

DAVID HILGER: Okay. [LB564]

SENATOR CHAMBERS: Then I will not have you up here too long... [LB564]

DAVID HILGER: Okay. [LB564]

SENATOR CHAMBERS: ...to explain that. You know what staff privileges are in a hospital, don't you? [LB564]

DAVID HILGER: Yes. [LB564]

SENATOR CHAMBERS: Now if the example I gave, and I'm giving a number arbitrarily to make the point, if there are 100 procedures that a person with staff privileges would be expected to participate in, and this individual said, I have staff privileges, but now this law is in effect; my conscience forbids me to participate in 98 of those staff procedures. Should that person...should the facility be able to lift that person's staff privileges? [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DAVID HILGER: Well, let me address that, and I think the...I know the intent of this with not only hospitals, with employees was, and I know people that have had to do this in reality, is that if you don't, number one, it would not be 98 percent. This is likely maybe 2 percent because we know that...we know what these little...these issues are. [LB564]

SENATOR CHAMBERS: No, Doctor,... [LB564]

DAVID HILGER: I want to finish, sir. [LB564]

SENATOR CHAMBERS: No, it's up to the individual. [LB564]

DAVID HILGER: Right. [LB564]

SENATOR CHAMBERS: If this person says it,... [LB564]

DAVID HILGER: Right. [LB564]

SENATOR CHAMBERS: ...that's what I want you to deal with. I don't want you to jump around and say that's not likely to happen. We have to go by what the bill allows. The bill allows a person to refuse to participate in any of these procedures that will violate the conscience, and that person's staff privileges cannot be lifted. [LB564]

DAVID HILGER: Okay. Your point is taken. Yes. [LB564]

SENATOR CHAMBERS: Do you...but do you agree with that? [LB564]

DAVID HILGER: Your point is taken, therefore, here's how I believe that would be handled in reality. If you applied to staff privileges at a hospital and you put 98 percent of the procedures required by your specialty that you couldn't perform, you would not get staff privileges. And if you said 2 percent of those procedures you could not perform, an honorable person--like you said that judge that withdrew himself--an honorable person would not apply for those privileges. He... [LB564]

SENATOR CHAMBERS: That's what you say. [LB564]

DAVID HILGER: Yeah. [LB564]

SENATOR CHAMBERS: But the bill allows. Then let's say we've got a dishonorable person... [LB564]

DAVID HILGER: Okay. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: ...and that person says, my conscience will not allow me to do these things. You cannot lift that person's staff privileges because he gave the reason that you cannot rebut--his conscience is violated. [LB564]

DAVID HILGER: I believe...I believe that would be handled up-front. But was the intent that if there was 2... [LB564]

SENATOR CHAMBERS: Well, you know what... [LB564]

DAVID HILGER: ...if there was 2 percent of the procedures a person couldn't...he put that on his staff privileges, I believe that the hospital or the employer would have the...should have the option of not hiring him. I mean I think that would be the intent. [LB564]

SENATOR CHAMBERS: If the person is working there and this bill takes effect, then the person can say, before I had this protection,... [LB564]

DAVID HILGER: Uh-huh. [LB564]

SENATOR CHAMBERS: ...I had to do these things, but now I have protection. My conscience prohibits me from doing these things and I won't do them and you cannot...why then would they put in here that you cannot remove staff privileges? You keep saying what's not going to happen and so forth. As a policymaker, I have to look at what the bill says. They wrote this. They brought this. They said enact this where the staff privileges cannot be lifted. And in the bill, and I read it, they can refuse to participate in any of these, any of these procedures if they violate their conscience. Then over in the bill you can...it's discrimination if you lift that person's staff privileges. And if you discriminate, you are subject to legal action, and it mentions the damages and the consequences to you for doing that. So you can sit there and say what you don't think is going to happen and what shouldn't happen. Then let me ask you this. Should we strike from the bill that statement that you cannot lift staff privileges? Should we remove that from the bill? [LB564]

DAVID HILGER: Well, I really don't feel like I can address the legal...the legal details, but I believe... [LB564]

SENATOR CHAMBERS: See, that's the way you are. You want to say it's not likely to happen, but you don't want to remove it from the bill because you know it will happen. [LB564]

DAVID HILGER: I wouldn't say that I would remove that from the bill. I would say... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: But I'm not going to argue with you. [LB564]

DAVID HILGER: ...I would say that perhaps we should look at this from an overall concept that it's important to have conscience protection and it's a devil is in the details and now we need to look at the details. [LB564]

SENATOR CHAMBERS: Well, they gave the bill. That's where I'm getting the details from. [LB564]

DAVID HILGER: I understand. But just because the details aren't exactly right doesn't mean we have to throw out the baby with the bathwater. [LB564]

SENATOR CHAMBERS: And you know what, I'm going to show you where you convinced me. [LB564]

DAVID HILGER: Okay. [LB564]

SENATOR CHAMBERS: I do believe that the devil is in the details and they gave us the details and the devil is in here. And I'm going to be the exorcist if I can. [LB564]

DAVID HILGER: Thank you, sir. [LB564]

SENATOR CHAMBERS: Hey, and I'm not challenging your conscience. I hope you don't think... [LB564]

DAVID HILGER: No. [LB564]

SENATOR CHAMBERS: See, your personal views are not even what I'm talking about. I'm talking about the bill. [LB564]

DAVID HILGER: Okay. [LB564]

SENATOR ASHFORD: Yes, Senator. [LB564]

DAVID HILGER: Anybody else? [LB564]

SENATOR ASHFORD: Oh, I think we have probably a few more. Yes, Senator Davis. [LB564]

SENATOR DAVIS: Just a couple questions. [LB564]

DAVID HILGER: Uh-huh. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR DAVIS: First of all, are there concrete examples of where this has happened in the state of Nebraska? And if you don't know the answer, maybe somebody else does. [LB564]

DAVID HILGER: I believe there is, there's one. I think it's knocking on our door, sir. You know, I could tell you in neighboring states, they have something called POLST--Physician's Orders for Life-Sustaining Treatment. It's basically a standing order that a patient can take with them for two years. It might not apply anymore. If your mother or your grandmother happened to sign one of these forms in a nursing home and they would take it in the emergency room, there's a standing order from a physician that that physician cannot give them antibiotics, even though it would save their life with just a small amount of antibiotics. So those things are knocking on our door. They're in other states that are around us, states that are close by us. [LB564]

SENATOR DAVIS: Okay. Well, let's answer that question then. [LB564]

DAVID HILGER: Okay. [LB564]

SENATOR DAVIS: That's the choice that that person made, is that right, that they didn't want to have antibiotics? [LB564]

DAVID HILGER: The question would be they made that choice... [LB564]

SENATOR DAVIS: That...just...just... [LB564]

DAVID HILGER: ...they made that choice two years ago. Has the situation changed? Is that person... [LB564]

SENATOR DAVIS: Well, that, see, that...the devil is in the details, as we heard, but... [LB564]

DAVID HILGER: Exactly. But then the survivor...that's why the physician...you cannot predict any...you cannot predict every situation that can occur and that's why you have to have the physician as the ultimate defense. [LB564]

SENATOR DAVIS: Okay. But you've got the definition of conscience. Conscience means the religious, moral, or ethical principles held by any healthcare provider. That's a great definition, except it's squishy. It's not concrete. So this is what I wrote down some time ago. So you've got a doctor who really hates to see resources wasted at the end of somebody's life and you've got...and we've referred to a guy with metastatic prostate cancer, so he's not treated at that hospital because that's your moral feeling--we shouldn't be wasting these resources. You get fired from that hospital. You say, that's my moral position and my conscience says that. So what recourse does that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

hospital have if this is enacted? [LB564]

DAVID HILGER: Let me give you...not sure what... [LB564]

SENATOR DAVIS: You know, you see that's why it's a problem. [LB564]

DAVID HILGER: Let me tell you the situation again. You're saying the physician refuses treatment? [LB564]

SENATOR DAVIS: Uh-huh. [LB564]

DAVID HILGER: On the basis of what, his conscience? [LB564]

SENATOR DAVIS: His conscience. [LB564]

DAVID HILGER: What about the patient's conscience? [LB564]

SENATOR DAVIS: We're not talking about the patient's conscience. We're talking about the doctor's conscience. [LB564]

DAVID HILGER: Okay. Well, that's part of my conscience is considering what the patient's conscience is. I mean that's... [LB564]

SENATOR DAVIS: The patient...the patient...you're the doctor. You refuse. You don't give the guy treatment. He dies. [LB564]

DAVID HILGER: I wouldn't. No doctor would make that decision without talking to the patient and their family. [LB564]

SENATOR DAVIS: You're probably right. [LB564]

DAVID HILGER: Yeah. [LB564]

SENATOR DAVIS: But the way the bill is, I think that could be...could conceivably happen. [LB564]

DAVID HILGER: Yeah, we could...you're right, there are scenarios, so that's the details. [LB564]

SENATOR DAVIS: Thanks. [LB564]

SENATOR LATHROP: Yeah, you know, we're about to go to opponents here and I just want the doctors that have come here today to understand that we appreciate what you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

thought was in here and we appreciate what your position is. And I don't know if it's accurately reflected in the bill, and there may be some difference between what you thought was going to be accomplished by this undertaking and what actually ended up in this amendment. And that may be the proper subject of an amendment or it may be there's no reconciling it. I don't know. But we don't want you to think that we're questioning your beliefs or your convictions, because that isn't the point. It's what's in the bill. And, you know, every doctor has come up here and says this should not trump the patient's rights and the patient's safety and, of course, we'd do what the patient wants. And the difficulty is the way it's drafted right now, the patient is not...there's nowhere in here that says the patient comes first. It just says that a doctor can walk away. And another function is the referral, so they don't literally, if you read this, if you literally read the bill, you don't have to do a procedure you don't like and nor do you have to find somebody else to do it, nor do you have to refer them to somebody that would. And there's no standard for when we provide an exception, which is if the patient's safety or health is at stake, you have to do it if you can't find somebody else to do it. And so those are the devil's...the details that we're struggling with and maybe we're teasing out with some of the questions or the statements, but it's not a...it certainly isn't a reflection on our view on your convictions or at least certainly not from my point of view. [LB564]

SENATOR ASHFORD: Yeah, and let me, if I could... [LB564]

SENATOR DAVIS: And mine. [LB564]

SENATOR ASHFORD: Yeah, go ahead, Senator Chambers. [LB564]

DAVID HILGER: Uh-huh. [LB564]

SENATOR CHAMBERS: No, no, I was just agreeing. [LB564]

SENATOR ASHFORD: No, I just wanted...and what I asked earlier is what I believe. I think that in a family where there are lots of physicians is my sense is, in talking to my family members who are physicians and have been physicians for many generations in this state and other states, that they...there is a sense that individual physicians have lost what they had, which is that ability to do what you think is appropriate, which is to make those ultimate decisions, vis-a-vis the patient. And what's happened is the hospitals that are only nonprofits, as they tell us,... [LB564]

DAVID HILGER: Uh-huh. [LB564]

SENATOR ASHFORD: ...they're just nonprofit organizations, you know, they're not businesses, have become businesses in effect. And what's happening is that physicians are, in fact in many cases, being required to be technically employees of these hospitals

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

in order to practice effectively. And that what I sense is happening is exactly...I mean I get it. I feel, just as I was mentioning earlier, I think there is a disconnecting of physicians from their patients in a real way and that these kinds of discussions about conscience, which are very real. And as Senator Chambers, I know one colleague who didn't pass the bar exam, even though he would have passed the bar exam, or didn't take the bar exam because he had a conscious objection to the way that the practice of law was being conducted. I may disagree or not, but he had a consciousness about it, he had a conscious objection to it. And I believe that you have these conscience concerns, concerns of conscience. And I also have real problems with how the hospitals organize themselves and how the hospitals run these rules and regulations without reflecting what are real concerns of physicians... [LB564]

DAVID HILGER: Uh-huh. [LB564]

SENATOR ASHFORD: ...and actually, in some sense, forcing them out of the practice. I mean I believe that's happening, so I get it, what you're saying. Now there is an overlay here that one could argue, well, this is a religious issue or something else, and religion may be driving part of it. And if it is, that's fine, too, because religion is part of conscience and part of ethics. But I think what's changing in the healthcare profession, to the detriment of patients, you know, and it's coming later in Omaha... [LB564]

DAVID HILGER: Uh-huh. [LB564]

SENATOR ASHFORD: ...because we have strong physicians' organizations, but it's coming. [LB564]

DAVID HILGER: Right. [LB564]

SENATOR ASHFORD: And isn't that, to some degree, apart from any of these other things, isn't that part of what's happening? [LB564]

DAVID HILGER: No. No, it is. You're right about that. And we're having other forces interfere with... [LB564]

SENATOR ASHFORD: Right. [LB564]

DAVID HILGER: Basically what's happening is we're having other forces interfere with that doctor-patient relationship. That's what it comes down to. [LB564]

SENATOR ASHFORD: Right. And I can't imagine, I mean you know Randy Ferlic probably. I can't imagine, when he was doing heart transplants, anybody on earth telling Randy Ferlic what to do. And that was his reputation. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DAVID HILGER: Right. [LB564]

SENATOR ASHFORD: And he probably couldn't practice today in the same way because they would tell him what to do. [LB564]

DAVID HILGER: Right. [LB564]

SENATOR ASHFORD: And enough said. But I...go ahead. [LB564]

DAVID HILGER: I think we can all agree that there is some importance to having conscience protection, I hope, and I... [LB564]

SENATOR ASHFORD: Right. But I just think the profession has...you guys have had a raw deal in many respects and I think a lot of that is being reflected here. Anyway, thanks for your comments. [LB564]

SENATOR CHAMBERS: Senator Ashford, you opened the door. [LB564]

DAVID HILGER: Thank you. [LB564]

SENATOR CHAMBERS: People have heard me say that if your principles are this deep, do something else. I'm the one. I graduated from Creighton Law School. I never flunked an exam, I never failed a class, and I didn't attend class. So for several years they wouldn't let me register because I did so well without attending classes. Creighton University Law School wanted to have a fund drive to build a new law school. They brought a dean here. He had been the former dean at Yale. His name was Stephen Frankino. And he looked at the folder they had on me and sent some students down--I became a barber--to ask me if I'd come back to Creighton and if I did, because he felt they had wronged me, I wouldn't have to attend class, I wouldn't have to pay any tuition, I wouldn't have to buy another book. So I went back. I finished those courses, didn't attend class. I went to a few of them. And I graduated. But because my principles are such, and maybe I'm the only one who feels this way, I will not be forced to join an organization and pay dues when I don't agree with it. And because a law school cannot be a law school unless it's accredited by the Nebraska Supreme Court, the fact that I passed all the exams, I passed all the classes, I should have been allowed to enter upon the practice of my profession in the same way a doctor is without joining an organization. That was not the case, so then I decided that I cannot practice law. That means I cannot give legal advice to anybody, I cannot represent anybody. But I can represent myself, I can write essays, and I can talk to people and it not be legal advice and they win cases. I've worked with lawyers. I've been offered jobs with law firms just to do legal research because they know I won't practice law. I practice what I preach. But because I practice what I preach, I cannot practice law. I'm unable to practice law and I'd venture to say I am as competent in the law as any person in this state. But my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

principles are mine. So if these people have that strong a conscience based on morality, religion, or ethics, then don't go where your conscience is violated. But to say that you take some kind of oath, whether with Hippocrates or the state or anybody else, that I'm going to do what a physician is expected to do but I want the law to excuse me so that I can say because of my conscience I'm not going to provide the care this patient needs, I'm not going to write the prescription this person needs for medication, if I'm a pharmacist I'm not going to fill the prescription and I'm not going to make the medication available, vaccinations that can help young women, I'm not going to give them because my conscience affects me, but I'm a physician, I have contempt for all such things as that. I have contempt for this bill. I have contempt for those who brought it. And when I would match my morality against anybody's, but I don't have an ounce of religion, I don't claim to be a moral person. I don't claim to be an ethical person in the way they do. I claim to be a man who has my own principles according to which I live. And I'm not saying people have to live according to mine, but I say when they tell me what their principles are, I'm going to judge them if they don't live up to them. And when doctors can come here and support this trash, I don't see that person as a doctor. I see that person not even as a meat cutter. I see that person as a butcher or the son of a butcher. And I think that Jack the Ripper had more in the way of integrity because Jack the Ripper did what Jack the Ripper did. But these people are going to cloak themselves in all of this ethical aura, the physicians, the bringers of health and healing, but at the same time saying, I want the right to look at somebody who needs what I have and I'm not going to give it. They wouldn't be like that Jesus, where he healed people who had devils, because they weren't his religion and all these other things they talk about. But as a lawmaker, I can express these views and I can do what I can to stop this from coming into the law and I will save some of these medical practitioners from themselves because they let their ideology blind them to reality. So nobody, I'll emphasize what Senator Lathrop said, is challenging your or anybody else's beliefs, but what I'm saying and speaking from me, those beliefs are not going to find their way into the law if I can stop it. And if I have to stop every other bill in the Legislature...if this gets out on the floor then I'm serving notice to the Speaker that they are delivering the session into my hands. And I will show you that I believe in my principles; that I will practice mine. And every bill that Senator Nelson has or anybody else has, if this thing comes on the floor, is going to be subject to my whim, if they want to call it that, and they cannot run this Legislature by cloture. That's the kind of man you're dealing with. Whatever that makes me, that is what I am and I want people to know it because when they came here they might have thought it was one thing, but they're going to find out it's something else. And I look at the people whose name on this...or names are on this bill and two of them were in the committee where I delivered a bill. And, Doctor, to show that I don't talk behind people's back, I mentioned that I have to hurry up and finish at this committee because I'm going back to the Judiciary Committee where they've got a crazy bill that lets doctors say, I'm not going to treat you, and I said, oh, two of the Senators, I said he's on...not Senator, but I pointed, Senator Scheer, he's on the bill. Then I saw Senator Murante. I said, he's on the bill. Because I wanted them to know I was talking about

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

their bill. You, from what you said to me, are what I would call a moral person, a person who believes in what he's saying. I listen to people. I read body language. You are suggesting that you would not behave in the way that I describe that a person can behave under the bill. And when I'm countering what you say, it's not challenging the way you behave because I wouldn't worry about you doing what this suggests that you could do. But there are others who want it. They came to Senator Nelson and said, get this because we've got people who don't want to give treatment, we've got people who don't want to perform these procedures but they want to keep their staff privileges, we've got those people and this bill will give them that, so take that bill and you'll find at least 24 other suckers in the Legislature who will go for it and give it to us. I wish you were in the Legislature and could vote. I wish you could take my place on this side of the table and understand what's in this bill and then talk to your colleagues about what it will do to them and their profession. I'm through. [LB564]

SENATOR ASHFORD: Thanks, Doctor. Yeah, that's fine. I absolutely believe what you're telling me. I absolutely believe it. I think you've been placed in a position that is untenable by the profession and I think...the way it has evolved and I think that's why we're here, and I think it's unfortunate. And I think you should be able to practice medicine the way you want to, but there's got to be a way other than through this bill to get there. And I think that's what some of us are questioning. But in any event, I appreciate your comments. [LB564]

DAVID HILGER: Thank you. And I'm sorry if I took other people's time up. [LB564]

SENATOR ASHFORD: No, you're fine. I just...but what we are going to do is go back to the Nebraska Medical Association, because I know there are questions about some things, and then we're going to go to the opponents. [LB564]

DALE MICHELS: Senator Ashford, I'm Dr. Dale Michels, as I mentioned, M-i-c-h-e-l-s, and I will try to answer your questions or I will try to write down the necessary things to provide some... [LB564]

SENATOR ASHFORD: And there may be some questions. You can go ahead. Did anybody have any questions off the bat of the NMA? If not,..go ahead. [LB564]

SENATOR LATHROP: You know, I might just... [LB564]

SENATOR ASHFORD: Yeah. [LB564]

SENATOR LATHROP: ...make a comment. I'm looking at the resolution, Dr. Michels. [LB564]

DALE MICHELS: Yes, sir. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: And it...I want to read one provision and then maybe talk about it: Be it further resolved, the NMA acknowledges the obligation of an employer and employee to know of any conscientious objections prior to employment and a warning for all employers to include job descriptions that define expectations in areas that may be affected...be affected by professional...a professional's conscience. I just wonder if there's a practical way to do that without getting the prospective employer sued for violating someone's religious liberties. And here's the example. And it was something we tried to deal with when I was involved in trying to come up with a framework for this, which is if you ask somebody and you say, do you have any kind of a...well, if you...as your resolution would require, that they disclose their conscientious objections, all I got to do is add, that's based on my faith. And if they don't get hired, I think the employer gets sued. And it's really one of the sticky wickets about trying to deal with this--how does the employer know in advance that the person they're hiring is going to do the substantial duties of the job, right, and find that out without getting themselves in a lawsuit over religious discrimination? And I think that's just a practical difficulty with expecting someone to disclose that in advance or, once they disclose it, giving them protections so that they don't have to do the work. It's hard to imagine getting to 98 percent of the work being something you have a problem with, but just an observation. And again, I would just reiterate what I said before, which is we don't doubt your sincerity or what you're trying to accomplish. And you know, we've had meetings that you and I both attended. [LB564]

DALE MICHELS: Yes, sir. [LB564]

SENATOR LATHROP: I think you have the perspective of both the practitioner and the employer. [LB564]

DALE MICHELS: I'll make only three comments very quickly,... [LB564]

SENATOR LATHROP: Sure. [LB564]

DALE MICHELS: ...because I'm not sure I could totally answer your question but I understand where you're coming from. It's my understanding, number one, when this was written by physicians, I'm not sure that we understood all of the legal requirements in the human resources and particularly I believe it's called Title VII, which has some significant restrictions on what individuals can or cannot ask. [LB564]

SENATOR LATHROP: Right. [LB564]

DALE MICHELS: We're somewhat naive. We some...my business manager fairly frequently, Senator Lathrop, says, Dale, you just asked a question you can't ask... [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: Happens all the time. [LB564]

DALE MICHELS: ...and tell the applicant not to answer. So we're learning, from that standpoint. We would like to make sure that an institution would provide adequate information so I knew what I was getting into if I'm getting into it. That should be a reasonable thing to expect. Number three is I've been sued for religious discrimination, Senator. I was sued by somebody on the basis of their religious discrimination while I had an employee in the same religion under my employ at the same time. I did not hire the individual because of their competence,... [LB564]

SENATOR LATHROP: Sure. [LB564]

DALE MICHELS: ...but I was still sued under religious discrimination. [LB564]

SENATOR LATHROP: Right. [LB564]

DALE MICHELS: That's part of the life we have to put up with when we make a decision. It was not comfortable. It was not cheap. But we had to make the decision the individual was not competent to work in our office. [LB564]

SENATOR LATHROP: Well, then you can see the trap. [LB564]

DALE MICHELS: I understand some of the trap. I also understand that when I go to work or when we have somebody who comes to work for us, and we hired a new position this year, we discuss with them who we are. We discuss with them what we are. We discuss with them what our mission statement is as a group. We try to provide them as much information that we possibly can. And we have to have a certain element of trust that they are going to tell us that, Dale, I can't do that, I'm sorry, I wouldn't commit. And that's happened. That's okay. I'd rather have that before, as I'm sure you would, Senator, than afterwards. [LB564]

SENATOR LATHROP: Sure. [LB564]

DALE MICHELS: So we...I understand your dilemma. I appreciate your comments about trying to make sure that there are certain things that maybe didn't get written in here in the way we wanted to, because intent for all of us and how the language actually comes out sometimes is, you know, it's the comment I think I've heard from some of you about legislation and sausage. There are some issues. So we want to work on that. If we need to correct some misstatements, we'll try to correct the misstatements. We think it's significant. You know, Senator Chambers raised the question. I'm now an old man in practice. Our hospitals in our community, which is Lincoln, have rules that say I have to admit so many patients within a year or I can't be on their staff. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: And that's nuts. [LB564]

DALE MICHELS: But I could claim, Senator, that that's on the basis of this gray hair that I don't admit people enough anymore and, therefore, they're discriminating against me on the basis of age. Would I even think of it? Absolutely not. [LB564]

SENATOR LATHROP: Well, we're sort of the what-if department over here. [LB564]

DALE MICHELS: And I understand that. [LB564]

SENATOR LATHROP: Okay. [LB564]

DALE MICHELS: And we all want to see as many what-ifs taken care of before. [LB564]

SENATOR CHAMBERS: Now, Doctor, although I went through it once, in order that I put it to you, because I'm not going to argue with you, you're stating the position of the Nebraska Medical Association. [LB564]

DALE MICHELS: The position of the Nebraska Medical Association was in the letter that you were presented and I was presenting that. [LB564]

SENATOR CHAMBERS: Which I didn't see. I probably...it's probably here. [LB564]

DALE MICHELS: You would have received it somewhere here. [LB564]

SENATOR CHAMBERS: Right. But I'm going to... [LB564]

DALE MICHELS: Which... [LB564]

SENATOR CHAMBERS: ...I'm going to fly blind in terms of that letter. I'm going to read these items once again so that they're clear, because I think as I began the discussion some of the doctors didn't realize how many things this bill specifies that a person can refuse to participate in. The first is on page 2, and I'm looking at their amendment now. [LB564]

DALE MICHELS: Please, because it changes significantly. [LB564]

SENATOR CHAMBERS: Page 2, in line 7. Are you with me where it begins "Conscience"? [LB564]

DALE MICHELS: I am with you, the definition of conscience. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: Okay. [LB564]

DALE MICHELS: I understand that. [LB564]

SENATOR CHAMBERS: "Conscience means the religious, moral, or ethical principles held by any health care provider." We start with that. Then we drop down to (3) on line 13, "Health care function means any phase of patient health care, treatment, or procedure, including, but not limited to, diagnosis or prognosis, instruction, patient referral, prescribing, dispensing, or administering any device, drug, or medication, research, counseling, surgery, testing, therapy, or any other care or treatment rendered by a health care provider or a health care facility." That describes healthcare function. Then when we go to the next page, 3, Section 4, starting in line 7, "A health care provider has the right not to participate in any health care function that violates his or her conscience. No health care provider shall be required to participate in any health care function that violates his or her conscience." That's in the bill and I read what all those functions are. Then if we go over to page 7, beginning in line 10 with "discrimination," for which you've been sued, "discrimination includes, but is not limited to, any denial, deprivation, or disqualification with respect to licensure, any form of aid, assistance, grant, benefit, or privilege, including staff privileges." Now the young doctor can say things wouldn't happen, but based on the language in this statute a person can say, 80 percent of those functions violate my conscience and I will not participate, and if you would do anything about that person's staff privileges, you have committed, by law, discrimination and you can be sued and there will be damages that you will have to pay. Did you know that that was in the bill when you wrote that statement? [LB564]

DALE MICHELS: I understand that, not in the same way you do, but I understand what's there and I understand what you're reading, yes, but... [LB564]

SENATOR CHAMBERS: Well, see, here's the thing that I'm asking you. Do you believe that if this is enacted into law that it will be applied and a person can act under the words of this law and do exactly the kind of thing I'm saying can be done and you cannot do anything about his staff privileges? [LB564]

DALE MICHELS: My experience, as a former chief of staff, would be that this is a theoretical issue that will never occur. [LB564]

SENATOR CHAMBERS: It's not theoretical. It's in the law. [LB564]

DALE MICHELS: So if they chose to terminate my staff privileges, for whatever reason, including the reasons in here, I have the right to sue them. [LB564]

SENATOR CHAMBERS: Right. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DALE MICHELS: Yes. [LB564]

SENATOR CHAMBERS: So you know that somebody can do that. [LB564]

DALE MICHELS: Yes. [LB564]

SENATOR CHAMBERS: If 80 percent of these procedures...that's what I'm showing you. We have to look at what can be done under the law... [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR CHAMBERS: ...and do we agree that that should be done. And I don't. [LB564]

DALE MICHELS: I understand that. [LB564]

SENATOR CHAMBERS: And what I'm asking, when you...first of all, since I didn't read the letter but it's here and I don't want to stop to read it now. Does the medical profession...the medical...Nebraska Medical Association go on record as supporting this bill? [LB564]

DALE MICHELS: Yes. [LB564]

SENATOR CHAMBERS: And that's the way it will show... [LB564]

DALE MICHELS: With the amendments. [LB564]

SENATOR CHAMBERS: That's...okay. Well, the amendment is... [LB564]

DALE MICHELS: Not the green copy but the... [LB564]

SENATOR CHAMBERS: ...what I was reading from. [LB564]

DALE MICHELS: Yes, sir. [LB564]

SENATOR CHAMBERS: And you support what I've read. [LB564]

DALE MICHELS: Yes. [LB564]

SENATOR CHAMBERS: Okay. I don't have anything else to put to you. [LB564]

SENATOR ASHFORD: Thanks, Doctor. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR MCGILL: Can I? [LB564]

SENATOR ASHFORD: Yes. Yes, Senator. [LB564]

SENATOR MCGILL: I guess I want to just...maybe this isn't really a question, but express my concern with this bill and its broad nature. It's the situation of a lot of young women who, 22 years old, you've graduated from college, you're looking for...maybe you moved to Lincoln or moved to a new city and you're looking for a doctor's office to get your annual Pap smear. And I think that most people, most women, would feel that, you know, you're looking for someone you can feel comfortable with and have a relationship with, and you just expect to get good medical advice on how to be healthy, stay healthy if there's anything wrong with you. And so a young woman goes in and gets her Pap smear. But based on this bill and ethics and religion, what if she happens to go into an office where that nurse practitioner or doctor doesn't believe in sex before marriage and isn't willing to? Under this, I don't see anything that wouldn't prevent that physician from saying, well...or not offering a HPV vaccine or proper advice on how to physically stay healthy if that person is engaged in sexual activity. And so it's not even about the birth control pill or abortion but some of those basic preventative healthcare measures that someone may find a moral problem with that young person's behavior or middle-aged person's behavior or whatnot and not give that proper advice. And is that something that the association has taken under consideration? [LB564]

DALE MICHELS: Actually, Senator, from my own personal experience, that has occurred, not maybe in exactly the same way you describe it, where I've had an...when I was young where I had an individual come in and want some particular thing related to that area, the broad area of sexuality, we'll use that. And I said, I'm sorry, that's not something that I'm comfortable with. Here are individuals that you can contact you may be comfortable with. And I can only speak for myself, Senator, but in those situations I've counseled, I've explained why I do or don't believe what I do. I've explained the options and I, in my personal case, have never charged those patients for that because I don't think that would be fair. But I also do find that there is... [LB564]

SENATOR MCGILL: And of course, this bill says you don't have to refer. I mean it says that that's one of the things in there but... [LB564]

DALE MICHELS: And that was a discussion we had,... [LB564]

SENATOR MCGILL: Yeah. [LB564]

DALE MICHELS: ...with Senator Lathrop, earlier. [LB564]

SENATOR MCGILL: Yeah. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DALE MICHELS: So our intent was, even though he and I would disagree on the language, our intent was that, no, that's not fair. We think that the situation requires the names of other individuals who might well be able to provide the services they may...this patient may request. The issue still comes back to whether or not I have to do something for a patient who wants it and the patient is going to trump my conscience for their conscience, or vice versa. Recently, Senator, I had a patient call me on a Saturday when I was on call, not my patient. She wanted to have a prescription. She was on Medicaid, which is interesting, but she wanted to have a prescription for the morning-after pill because she didn't want to spend her money on it. She would rather have the state... [LB564]

SENATOR MCGILL: I'm not talking about the morning-after pill. I'm talking about preventative medicine to make sure a young person doesn't get an STD... [LB564]

DALE MICHELS: And in those... [LB564]

SENATOR MCGILL: ...that can impact their health for the rest of their life. [LB564]

DALE MICHELS: In those situations, if there is the ability to have a good discussion, which is a relationship between a patient and their physician, they understand when they leave they may want...they may say at the end of the discussion, I disagree with you, and I'm going to say... [LB564]

SENATOR MCGILL: But a doctor is there to give medical advice, not to be their priest or their parent. [LB564]

DALE MICHELS: And I don't think, from what you've said, that I'm being their priest or their parent. I'm simply saying this is why I don't feel this is appropriate. That gives them the choice to go somewhere else. [LB564]

SENATOR MCGILL: I'm just not sure that's the expectation that most...that many people have when they go to see a doctor and that's where I get concerned about where does the patient play into this and where is it more about the patient and giving them information that's pertinent to their health. [LB564]

DALE MICHELS: I would expect that if I were the physician providing the healthcare information to the patient, I should be able to articulate adequately why I think something should or should not occur. That doesn't provide a moral judgment on what they do. [LB564]

SENATOR MCGILL: But it's not even a...but it's not even a life or death moral judgment, like abortion is or birth control perhaps, but I'm really struggling with this aspect of it. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

DALE MICHELS: And I understand your struggle. And as a practicing physician for 38 years, it's not been the most comfortable thing but I've, you know, if I can communicate with somebody, sometimes they'll say, I see what you mean, I'm not going to do; or, no, I disagree with you, can I go somewhere else. [LB564]

SENATOR MCGILL: Well, thank you for being here. [LB564]

SENATOR ASHFORD: And then I'm going to let you go, but I just, for my own edification, I just want to see if I understand where the real...today's problem exists and I...is this. In your case, you're perfectly justified to explain to, I think, I mean to explain to a patient what you do or don't do in your own practice. What I'm wondering though is what's happening in the profession is that the hospitals or larger healthcare practices have certain things that you have to do... [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: ...in order to practice in those places, whether it's a hospital or somewhere else. And some of the things that they're...on that list are things that if you were practicing, you know, as kind of the old physician down the street, who was you, that you could elect not to do, but that the hospitals are requiring you to do them. [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: Isn't that...I'm not putting words...but isn't that a big part of the problem? [LB564]

DALE MICHELS: I think... [LB564]

SENATOR ASHFORD: Or is that what gave rise to a lot of this,... [LB564]

DALE MICHELS: I think... [LB564]

SENATOR ASHFORD: ...because you were being required to do stuff you wouldn't normally do 25 or 30 years ago in your own...? [LB564]

DALE MICHELS: I think, Senator, perhaps it needs to be broadened just a little bit. [LB564]

SENATOR ASHFORD: And I grant you that. [LB564]

DALE MICHELS: I'm not sure it's the institution always. The institutions generally, that

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Transcriber's Office

Judiciary Committee
March 01, 2013

may not be a problem, but it can be the insurer. It almost certainly can be government. [LB564]

SENATOR ASHFORD: But it's sort of going out...getting out of your hands. That's what I hear you saying. [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: Is that 25 or...and I'm not making a value judgment. I'm just trying to understand the nature of the problem. [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: And my guess is that that...that what's bringing this, aside from everybody has a different reason for bringing something, but when it comes down to the day-to-day operations of healthcare, it's changed a lot. And that there are physicians who care deeply about certain things and they would rather not perform XYZ and that...and they're being required to do so, and that's being very...it's very bothersome to them, and it's beyond bothersome. In some cases, it goes against their...how they are and what they believe. [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: Is that the most prevalent problem now? [LB564]

DALE MICHELS: I think that's one of the parts that puts together or creates the problem, is that I'm being asked to do things. I think it goes perhaps...and I thought I tried to explain it but obviously didn't do a good job. [LB564]

SENATOR ASHFORD: No, I think you explained it right. I'm just trying to understand. [LB564]

DALE MICHELS: The issue is that if you as a patient want certain things and the system says, no, Senator Ashford, you're now 85 and you can't have them. [LB564]

SENATOR ASHFORD: Right. [LB564]

DALE MICHELS: As much as you and I may want them,... [LB564]

SENATOR ASHFORD: Right. [LB564]

DALE MICHELS: ...if the system says, no, you can't have them,... [LB564]

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Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: And that's another... [LB564]

DALE MICHELS: ...it's actually a violation of your conscience as well as mine. [LB564]

SENATOR ASHFORD: Well, and we've...and in this...and I know this has gone way, way too long for a lot of people in this room and I apologize from my end of it, as Chair. But we've gone through different examples of that in this committee in the last seven years about end-of-life decisions, things like that, that have come up in very highly publicized cases about what do you do, you know? [LB564]

DALE MICHELS: Uh-huh. [LB564]

SENATOR ASHFORD: And you have the institutional...you have the legal issues of what you should, you know, what can and can't be done. You have the institutional questions about what the policies are of a particular hospital regarding these matters. And then you have the individual doctors just trying to do the right thing, and sometimes in their mind, his or her mind. And then...but my sense is that that is getting lost. [LB564]

DALE MICHELS: And I think you also have the individual patient who wants certain... [LB564]

SENATOR ASHFORD: And the patient. [LB564]

DALE MICHELS: ...certain sets of expectations. [LB564]

SENATOR ASHFORD: Right. Right. Right. [LB564]

DALE MICHELS: Yes. [LB564]

SENATOR ASHFORD: And I don't know if you can do it in a law, but I...maybe I understand it better and maybe it's very simplistic. [LB564]

SENATOR CHAMBERS: Senator Ashford, may I,... [LB564]

SENATOR ASHFORD: Yeah. [LB564]

SENATOR CHAMBERS: ...just for one other example? There was an elderly lady. People view me in my community something like an ombudsman and she wanted a heart transplant, and she had a heart device already, and she thought she was being denied because she was black. [LB564]

DALE MICHELS: Uh-huh. [LB564]

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Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: So she wanted me to intercede for her and I told her that I'm not a doctor and I cannot diagnose your case, but you're going to have some consultations. Are you willing to let me sit in on those with you? She said, that's what I was going to ask you to do. So I wound up sitting in. I asked questions of the doctor with reference to every issue the woman had raised with me. She felt much better when we left and I even got some brochures and a video that related to people obtaining heart transplants. So after I went through all of that, I told her that I had to have a serious discussion with her. And since she came to me, I could tell her nothing but what I deemed to be the truth. And I did not think that she was being denied the transplant due to her age, due to her race, or due to her lack of money. I said when I read this information, it was not written, to me, about your case. The video was not prepared to persuade me to say something in your case. But because of the aftercare that's necessary, the assistance you would need to have in your home of people who could give you the care, who would help make sure you took the medication that was necessary and all of the other things, and you don't have any of those other things, the depression that often falls upon a person after a transplant despite the fact that they got what they wanted, I said when I look at all of those things and your situation, I would advise you, not as a doctor, not to even pursue the idea of a transplant; keep the treatment that you're receiving with the device that you had. It wasn't exactly a pacemaker. And you know what she said after all of that? She said, Senator, I knew that but I needed to hear you say it. And I didn't know that's all she wanted. But here's the point I'm trying to get to. I try to help people, but I'm not going to say what they want to hear if I don't think what they want to hear is the truth as I see it. So everything I've said here today I believe, deeply and sincerely. And I say all that to say this: I am deeply and sincerely disappointed in the Nebraska Medical Association. And I think if people had been here this afternoon and listened to you and the ones who support this bill, doctors and all, and listened to me, they would have far more confidence in what I would say to them about their situation, even not being a doctor, than they would anybody who has spoken here. We haven't had straight, forthright answers. We hear people say: well, I thought; well, I don't believe that will happen; it's not likely, it hasn't happened before. Yet, we have the law to protect people and shield them if they do these things. If they're not going to do them then why do they want a law to protect them? So that's what we as lawmakers have to look at. And I mentioned that little anecdote, and it is true. Dr. Sears is at the UNMC and he didn't know of all the things that I was doing there but I mentioned why I was there. And if you forget his name, think of Sears and Roebuck, because that's how I remember his name. We deal with things other than just voting for or against legislation. But I, for my part, feel I have an obligation to let the people who take the time to come here know what my views are. And if they disagree with them, then maybe they can counter those views in contacting other senators so that they can oppose what it is that my views are. But I don't try to hide anything from anybody. And whereas they might be offended when they hear me say what's on my mind, in the long run and at some point they're going to be glad that they dealt with somebody like me instead of other people they might deal with who will give the impression that they hold

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

a certain position when they don't, who will offer a bill that they don't even understand in order to accommodate somebody and then fold under the pressure, not of opposition but because they didn't even read the bill carefully themselves and they cannot defend it, they cannot justify it, as you cannot defend the position that you all took in this resolution, because I have read it. And that's all that I have. And I do appreciate your having come up here. Where you're sitting is not the easiest place to sit because Senator Lathrop knows a lot about the law and he asks some penetrating questions. [LB564]

DALE MICHELS: Okay. [LB564]

SENATOR ASHFORD: Thank you very much. [LB564]

DALE MICHELS: Yep. [LB564]

SENATOR ASHFORD: Let's go to the opponents. How many opponents of this bill do we have? All right. Let's start with the opponents. First, anybody. There's some spaces in the front row. You can sit up there. It might be easier. [LB564]

MIKE LEWIS: (Exhibit 7) Good afternoon, Senators. My name is Mike Lewis. I live in Lincoln in Senator Coash's district. I grew up in Furnas County, in Senator Christensen's district. And I'm here today as the chairman of a new statewide, grass-roots group called the Nebraska Secular Advocates. We represent atheists, agnostics, and other nonreligious Nebraskans, but we also welcome the participation of religious Nebraskans who share our commitment to the separation of church and state. We are strongly opposed to LB564, including as amended by the amendment, AM453. This bill would create an expansive right of refusal for healthcare providers and facilities that would unreasonably interfere with patients' rights to obtain legal products, procedures, and treatments. We believe that healthcare workers should not be allowed to impose their religion on patients in such a sweeping way. We support everyone's right to freely practice and behave in accordance with their religion, including healthcare providers. We also recognize that there has long been a healthcare right of refusal in Nebraska pertaining to abortion, but religious freedom or, more broadly, freedom of conscience is not absolute. Courts have long upheld certain restrictions on such freedoms, especially when the life, health, or well-being of other people is at stake. Under this bill, religious ideas about the immorality of contraception, sterilization, and destruction of blastocysts would trump reasonable and often medically necessary healthcare, family planning, and embryonic stem cell research. Ironically, the bill itself acknowledges that freedom of conscience is not absolute because the bill stipulates that healthcare providers must follow statutory restrictions pertaining to abortion and end-of-life care even if the provider believes those restrictions are unjust. We urge the committee to kill this bill. Thank you. And take any questions. [LB564]

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Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: I see no questions, Mr. Lewis, but thanks for coming in today. We appreciate your testimony and it's certainly now part of the record. [LB564]

MIKE LEWIS: Thank you. [LB564]

SENATOR LATHROP: Next opponent. [LB564]

PAUL OLSON: (Exhibit 8) Senators, my name is Paul Olson. I am member of the steering committee of Nebraskans for Peace. I am not a medical professional. I'm a recipient of medical services. My daughter is a professional. I'm speaking in behalf of the Lincoln Chapter of Nebraskans for Peace and I'll read the testimony. The Lincoln Chapter of Nebraskans for Peace opposes LB564. We recognize that the bill endeavors to assert the rights of the individual to oppose public policy based on considerations of conscience. This is a principle which Nebraskans for Peace regards as sacred, given our longstanding commitment to the rights of conscience, conscientious objection, and resistance to military service. Our commitment roots itself in the notion that a public proclamation of conscience and consequent conscientious behavior constitutes an exercise of religious freedom. The price of exercising conscience in this way for peace people has often meant death, imprisonment, and social ostracism, and conscientious objectors have been willing to pay that price. But conscience does not exact a price in LB564. This bill does not require that a medical practitioner declare what conscience tells him or her before the patient enters into a provider-patient relationship. For example, providers could, in their consciences, hold that they could not provide a certain medicine because that medicine had, in their view, been manufactured through an unethical but legal process. Let us say that the medicine cures a certain kind of diabetes. A provider would not at the outset be required to indicate what he or she could...would or would not provide, and so the provider might be deep into the provider-patient relationship before revealing the grounds of conscience for denying a crucial medicine for late-stage diabetes. Moreover, he or she would not need to refer the patient to another provider who could provide such a medicine. I know the amendment tries to cover that but, still, Section 5 includes referral. The practice of medicine is a public trust, publicly licensed, and while the rights of individual conscience should be respected in that practice, to the degree that public trust is involved, the Nebraskans for Peace Lincoln Chapter believes that providers need to declare their consciences publicly, up-front, and give their patients due notice. They need also to assist with the channels that permit access to legally sanctioned provider services. Finally, the bill also speaks of the conscience of institutions. It is not clear how the conscience of an institution is to be understood. Does the phrase refer to the edicts of the sponsoring collective that created or owns the institution? Does it refer to the edicts of the institution's board of directors? Does it mean the institution's administrators? Or does it mean the collective of the providers? In some cases, public disagreements among various of these constituents of an institution have come to the public notice, and the law needs to specify what constitutes the conscience of an institution and how

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

that conscience is constituted and legally recognized. Thank you. [LB564]

SENATOR LATHROP: Very good. Thank you, Mr. Olson. I do not see any questions. Next opponent. [LB564]

GARY GEORGE: (Exhibit 9) Good afternoon. I'm Gary George, last name G-e-o-r-g-e. I'm a registered nurse. I'm here today representing the Nebraska Hospice, Palliative Care Association, testifying on our behalf as well as the behalf of the Nebraska Nursing Facility Association, Nebraska Assisted Living Association. Together, we oppose LB564. As written, the bill has troublesome and far-reaching implications, far beyond a similar bill proposed during the last session which was more focused on allowing healthcare providers to refuse to participate in abortion-related procedures, stem cell research which did not fit into their moral framework. LB564, by contrast, seems to open floodgates by allowing a licensed healthcare provider to refuse to participate in any healthcare function, which is broadly defined in the proposed bill. The bill goes to extreme lengths to protect the healthcare worker who refuses to provide the very care for which he or she was trained and licensed, and protects the providers when they choose to dishonor the patient-caregiver relationship by allowing their deeply held convictions to reign supreme, above the similarly deeply held convictions of the patients. While it protects the rights of the healthcare provider, the bill does not protect the safety, well-being, and choice of the patient. Most often when a patient needs healthcare, the patient has no opportunity to choose the licensed healthcare providers who will deliver their care. The patient would rarely have the luxury of interviewing their healthcare providers to evaluate their ethical convictions. We trust we are being cared for by professionals who are educated and vetted through the licensing process to deliver high-quality and safe care to every patient, every day. And as patients, we trust our healthcare providers are going to deliver the appropriate care and treatment we desire. Because the patient is depending on the trust relationship, one extremely troubling aspect of the proposed legislation is that it seems to eliminate the requirement for referral. In that way, the bill undermines the entire foundation of trust between patient and caregiver. To hold a license as a healthcare worker does not give license to superimpose the healthcare licensee's ethical standards onto every single patient for whom he or she is entrusted to care. The duty is to care for that patient and this bill offers a legal way to avoid providing care without possible recourse. We are not aware of any instances in Nebraska where a healthcare provider has been discriminated against because of his conscience. Thus, the bill is a solution in search of a problem. There's an end-of-life document developed by Robert Wood Johnson Foundation which is legal as an advance directive in 42 states, including Nebraska, plus the District of Columbia. The document allows each of us to specify the kind of care we would want in order to make our last days, weeks, and months of life symptom-free, medically well-managed, and meaningful as possible. The document is called "Five Wishes." I never dreamed there could come a day when one of my five wishes would have to be for a cluster of healthcare workers who hold identical convictions as mine in order to be

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Transcriber's Office

Judiciary Committee
March 01, 2013

able to trust that the rest of my wishes will be honored and I will receive the care I desire. We appreciate the conversations brought about by LB564, but contend it would do more harm than good to Nebraska's healthcare system to those seeking treatment. [LB564]

SENATOR LATHROP: Mr. George. [LB564]

GARY GEORGE: We'd urge.... [LB564]

SENATOR LATHROP: Okay. Yeah, no, I appreciate everything you're saying... [LB564]

GARY GEORGE: Okay. [LB564]

SENATOR LATHROP: ...and we're glad you came down but... [LB564]

GARY GEORGE: Good enough. [LB564]

SENATOR LATHROP: ...in order to get more testimony, we... [LB564]

GARY GEORGE: Appreciate it. [LB564]

SENATOR LATHROP: Let me see if there's any questions, however. Okay. I see none. [LB564]

GARY GEORGE: Thank you. [LB564]

SENATOR LATHROP: Thanks for coming down today. If you want, you can move up to this chair and get a little bit closer to the... [LB564]

TRACY DURBIN: It helps to be close. [LB564]

SENATOR LATHROP: Yeah. Yeah. Good afternoon. [LB564]

TRACY DURBIN: (Exhibit 10) Good afternoon, Vice Chair Chambers (sic) and members of the Judiciary Committee, my name is Tracy Durbin, D-u-r-b-i-n. I'm the director of quality and risk management at Planned Parenthood of the Heartland and I'm here to weigh in on the proposed refusal clause, LB564. We oppose this bill. Because Planned Parenthood provides reproductive health services, my remarks today are going to focus on the challenges a woman could face if this policy were adopted. LB564 could jeopardize a woman's life or health, prevent needed care, delay care, and impose additional costs. LB564 would be a particular burden for a woman living in a smaller community that has a limited number of providers, perhaps one hospital or a single pharmacy. Let me paint you a little scenario here of something that could happen. In the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

middle of the night, a rape victim goes to the emergency room of the only hospital in her community. She asks for emergency contraception. She's in a distraught state, which is exacerbated when the request is denied. Her request is denied either because the facility or the provider on duty or both refuse to help. It would be little comfort to be told she can seek help at another hospital in another community. Or perhaps she could wait until the next day to see if the local pharmacist has the needed contraception. But it's not inconceivable that, given permission by the state to refuse treatment, the local pharmacist and, indeed, nearby hospitals might also deny her care. Now let's talk about a couple situations that actually did happen. True story: In November of 2010, a woman in southern Arizona was 15 weeks pregnant with twins when she miscarried one at home. She went to the only hospital available, a religiously affiliated hospital, for treatment. She was told the miscarriage could not be completed because the remaining fetus still had some heart motion. According to her treating doctor, nothing could be done to save the fetus. And without treatment, she was at risk of hemorrhaging or developing a life-threatening infection. She was sent 80 miles away for treatment because hospital administrators considered completing an inevitable miscarriage to be an abortion. This delayed her treatment and put her life in danger. Another true story: An 18-week pregnant New Jersey woman arrived at a hospital and was "standing in a pool of blood." An ultrasound revealed Sarah Johnson had suffered a complete placenta previa, a condition that could become fatal to both her and her fetus. She faced a high risk of suffering a fatal bleeding episode. The attending physician called for an emergency C-section. The on-duty labor and delivery nurse refused to scrub in to help, citing her religious objections. Medical personnel had to scramble to find another nurse to cover the shift, which delayed her procedure for a dangerous 30 minutes. I share these stories not because they are tales of fantasy. They are real and likely and dangerous. And if the Legislature proceeds down this path, we'll have stories to share of women in Nebraska who have been betrayed by their healthcare system. Thank you for your attention and consideration. [LB564]

SENATOR LATHROP: Very good. Thank you, Ms. Durbin. Any questions? I see none. Thank you. And the next witness may come forward. [LB564]

O.K. CORRALES: O.K. Corrales and I've been here for the whole session. I heard what this man said about honesty, try and be honest. I came here for a different issue. I think I ended up in the wrong room. This is a pretty important issue. I stayed to listen. Also, in honesty, I didn't graduate from Creighton without going to class. I never went to any school, period, out of high school. But just off, I didn't read this bill, but just off of what I heard on it, it's pretty preposterous to think that whoever brought this...I mean, to be honest, I'm not pro-choice or pro-life. I am antiabortion in the case of birth control, so we get that out of the way. But it's ridiculous to me to think that whoever brought this bill couldn't foresee what my uneducated self, who didn't even have no real exposure to this thing, could see. He's asking you, okay, you've got it right in here, it's so vague, these things can happen. And instead of saying, well, man, we've got this stuff in here that's

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Transcriber's Office

Judiciary Committee
March 01, 2013

going to counteract that, we've already thought about that, we've got all these lawyers, we've got legal counsel, you just say, oh, man, I don't think that's going to happen; man, I couldn't believe that; I would never do that. I mean it's insulting to think that a bunch of people with all your degrees and you're all working together and this is the best you could do, man. Like I'm against abortion in terms of birth control, so I'm with you on that. But this is ridiculous, man. I mean, watch some Perry Mason. Do something. Figure out what it takes to get a bill through that could actually have some kind of effect on the issue that you're talking about. And you know, you continue saying the same thing over and over. And they're asking you the same questions and you give the same answers every time. So if none of that makes sense and you haven't been able to put together something that like somebody like even myself can see the legal...not just potential but it's like it's built in there that there's going to be problems for this stuff. Instead of trying to push through something so vague, maybe ask yourself why you have failed so miserably to sell the public on getting rid of mass murder of children. Why can't you get the point across on something that should be so easy without having to push through something that's just ridiculous, man. I mean he's not even hardly looking out for like the patient. He's looking out for the people who got to hire these people and say, oh, man, whole new can of worms now from this thing. I mean I would be embarrassed if I was you all to have come up here and say I'm having...we're talking about abortion. I know there's all these other things and they're big money too; it's mainly about abortion. If that's what you all say you're trying to do, you should be embarrassed for coming up here and trying to say you're representing unborn children through this ridiculous, ridiculous public display. [LB564]

SENATOR LATHROP: Hang on a minute. Give us your name, if you don't mind. [LB564]

O.K. CORRALES: O.K. Corrales. [LB564]

SENATOR LATHROP: Pardon me? [LB564]

O.K. CORRALES: Corrales. [LB564]

SENATOR LATHROP: That's your last name? Can you spell that for us? [LB564]

O.K. CORRALES: C-o-r-r-a-l-e-s. [LB564]

SENATOR LATHROP: And your first name? [LB564]

O.K. CORRALES: O.K. [LB564]

SENATOR LATHROP: Okay. [LB564]

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Transcriber's Office

Judiciary Committee
March 01, 2013

O.K. CORRALES: It's a nickname,... [LB564]

SENATOR LATHROP: Okay. [LB564]

O.K. CORRALES: ...is what they call it. [LB564]

SENATOR LATHROP: Okay. The reason we ask is so that somebody types all this up and we want to make sure the record reflects your testimony. [LB564]

O.K. CORRALES: Yeah, that would what...if you want to know me, that's where it's at. [LB564]

SENATOR LATHROP: All right. Very good. Thanks for coming down and your thoughts. [LB564]

WILL SPAULDING: (Exhibit 11) I'm Dr. Will Spaulding. I'm here representing the Nebraska Psychological Association. We've been involved in discussions about this stuff for three years now, which is the length of time that our licensing regulations have been held hostage to the same interests that are pushing this bill now. Needless to say, we're highly opposed to it. We are among the healthcare providers that are ostensibly protected by this bill. We don't want that protection. We don't need it. We're more interested in protecting our patients. I have little to add technically beyond what's already been said. Our reading of the bill and its amendments is considered...is consistent with the legal scholarship of this committee. I only have to add this. No psychologist in Nebraska is being forced to provide any services in conflict with religious or ethical beliefs. There has never been a complaint involving a psychologist refusing or being forced to provide services despite a conflict of conscience. The proponents of this bill cannot produce any psychologist who can honestly say that he has ever had to violate any law or ethical code or has been at risk for losing his job based on refusal to treat anybody for any reason. No psychologist anywhere has ever been successfully prosecuted or sued for refusing to treat someone. Psychologists are now and always have been free to decline services to anybody. This is not just our opinion. Our national organizations, including the American Psychological Association and its professional insurance trust, closely monitor the reasons for psychologists being sued and prosecuted, and this is not one of them. Psychologists can easily and safely resolve conflicts of conscience by making an appropriate referral to another provider. Ultimately, this bill is a blanket immunity clause, providing a way to use conscience as an excuse for negligence. Thanks. [LB564]

SENATOR LATHROP: Thank you, Dr. Spaulding. I don't see any questions. [LB564]

TERRY WERNER: (Exhibit 12) Good afternoon, Senator Lathrop and Judiciary Committee. My name is Terry Werner and I'm representing the Nebraska Chapter of the

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Transcriber's Office

Judiciary Committee
March 01, 2013

National Association of Social Workers. But for the record, I am also submitting for the Nebraska Association for Marriage and Family Therapists (sic) a letter. NASW opposes this bill. It's our belief that legislation and regulations, and I mention regulations as Dr. Spaulding just touched upon, the aim of legislation regulation is for the health and safety of the individuals of the state of Nebraska. This bill does not do that. This bill, despite what previous testifiers have said, is there to protect the provider. All codes of ethics, including the social work code of ethics, basically says do no harm, as you mentioned earlier, and the client is primary. Our code of ethics goes on to say a strong belief in the self-determination of the individual client or patient. Senator McGill was getting at before, clearly this bill does not provide for self-determination and I would not want to go to any provider that did not allow...provide me with the information and allow me to make my own decisions based upon the information that I received. An example of how this kind of legislation is eroding away the values of "the client is primary" is what happened today at the Board of Mental Health Practice. In 2007, this Legislature passed independent practice for social workers and other mental health professionals. Since that time, the Board of Mental Health Practice, which regulates our profession of licensed mental health professionals, has been working to upgrade and reflect the new legislation in the rules and regulations. When they came to a public hearing, the Nebraska Catholic Conference opposed our regulations based upon the fact that they did not want to be forced to provide services to gay and lesbian clients. All of the professions, which represent probably 99 percent of the mental health practitioners, oppose that said that you can refuse service but you must provide an adequate referral. Since then, we're talking over four years, the Board of Mental Health has wrestled with this issue, and at the last meeting basically all of the members of the board said that they agreed that we should say you must provide a referral, and stop. However, due to political pressure from the administration and the Catholic Conference, they were required...they only would...they were required by the administration to find a compromise. The only language that the Catholic Conference would accept was that you must provide a referral but here's the way you can do it, and basically just handing them a piece of paper, which in our mind is an inadequate way to provide a referral. Today the board succumbed to that pressure and passed those regulations on to the administration. So that's the kind...I think an example of how this is eroding our values and not protecting the public in this state. [LB564]

SENATOR LATHROP: Very good. Thanks. Appreciate you coming down. I see no questions. Next opponent. [LB564]

BRUCE RIEKER: (Exhibit 13) Senator Lathrop, members of the Judiciary Committee, my name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association, here in opposition to LB564. What I'd like to do first is the testimony that I'm submitting to you is a summary of the policies at our hospitals across the state. And here too, this isn't a model policy but it's a collection of information from them about how they handle such situations. But Nebraska's hospitals recognize

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Transcriber's Office

Judiciary Committee
March 01, 2013

there are treatments and procedures generally accepted as good medical practice, which some individuals may have objections of conscience. Those treatments and procedures may include, but are not limited to, termination of pregnancy, termination of life-support systems, counseling, and treating patients with communicable diseases. While our member hospitals make every effort to respect the feelings of their staff, their first responsibility is to the patient. And that is something I've heard from the proponents, but I seem to get lost as to, once it's said, how the proposed LB564 puts the patients first. So continuing, the welfare of the patient rests with the staff physician in charge at the organization. The physician is responsible for the decisions of the treatment of the patient. Employees having objections of conscience to a physician's order may not amend or delay those orders. These policies, by and large, are communicated to our employees in writing at the time of orientation and throughout employment. Employees are required to express their objections to their supervisor in writing and may ask to be excluded from specific duties. If reasonably possible, arrangements may be made in advance for qualified staff members to carry out the ordered treatment and procedures. If not, the objecting employee will be required to complete the patient care. Every reasonable attempt will be made to accommodate properly communicated objections. Objections are resolved, whenever possible, at the staff member level via schedule changes, reassignments, or coworker assistance based on the hospital's responsibilities to the patient and physician, and the hospital's ability to adjust staffing responsibilities. If reasonable accommodations are not possible, human resources departments assist the employee with options that may include transfer to another department or termination. The NHA requests that the committee refrain from interceding where employment law already governs these issues and asks that you would indefinitely postpone LB564. I also have a few comments that...listening to the other testimony. I want to point out that the providers have a choice. I mean we have many faith-based hospitals and we have many non-faith-based hospitals, and they offer different specialties and the providers have a choice with whom they would want to contract with to provide care through them. We've already heard about the overly broad... [LB564]

SENATOR LATHROP: Bruce, you're going to have to wrap it up... [LB564]

BRUCE RIEKER: Okay. I'll do that. [LB564]

SENATOR LATHROP: ...because of the light. [LB564]

BRUCE RIEKER: Okay. [LB564]

SENATOR LATHROP: And we still have another bill after this. [LB564]

BRUCE RIEKER: You bet. But I'll just close right there, that for the reasons I gave you, we're opposed to the bill. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR LATHROP: Okay. I see no questions. Thanks for coming down today.
[LB564]

BRUCE RIEKER: You bet. [LB564]

SENATOR LATHROP: Next opponent. And while he's coming up here, is there anybody else here in opposition? Okay. Senator Nelson, I guess get ready for a close. Welcome.
[LB564]

CHRISTOPHER WELSH: Thank you. Christopher Welsh, W-e-l-s-h, on behalf of the Nebraska Association of Trial Lawyers. We oppose this bill for two main reasons. This is not a patient's bill. This is an immunity bill that allows a physician or a healthcare provider to hide behind their personal conscience. This bill effectively would change the standard of care. It would no longer be an objective standard of care. It would be a subjective standard of care based upon that individual doctor's conscience and no one could ever challenge that, period. This bill is nothing to do with the safety and health for patients and we oppose it because it's a blanket immunity for somebody to hide behind their personal conscience. If there's any questions, I will take those. [LB564]

SENATOR LATHROP: Senator Coash. [LB564]

SENATOR COASH: Thank you, Senator Lathrop. Mr. Welsh, I don't see where this provides any civil immunity in this amendment. [LB564]

CHRISTOPHER WELSH: The fact that they can refuse to provide care based upon their conscience, in effect, is a blanket immunity from any civil action brought by a patient.
[LB564]

SENATOR COASH: Okay. I don't know if I see it that way but... [LB564]

SENATOR LATHROP: Senator Seiler. [LB564]

SENATOR SEILER: I have just one question. It's been bothering me all day. Is Section...or Article I, Bill of Rights, Section 4 of the Constitution of Nebraska talks in terms of, "nor shall any interference with the rights of conscience be permitted." If you sue, is the constitution a defense to your lawsuit? [LB564]

CHRISTOPHER WELSH: I'm sorry, I didn't hear that last part, Senator. [LB564]

SENATOR SEILER: Isn't the conscience freedom in Article IV...or Article I, Section 4 of the constitution prohibit your lawsuit for standing on their conscience? [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

CHRISTOPHER WELSH: Well, the immunity is based upon their conscience. [LB564]

SENATOR SEILER: Right. [LB564]

CHRISTOPHER WELSH: And it effectively changes the standard of care, which is an objective standard... [LB564]

SENATOR SEILER: Well, but that standard of care is set out in the Constitution of Nebraska. [LB564]

CHRISTOPHER WELSH: But the standard of care has nothing to do with an individual doctor's conscience. That's not what the Nebraska Constitution says, with all due respect, Senator. [LB564]

SENATOR SEILER: Well, I'm reading it right off the top, so just wondered. You might take a look at that. [LB564]

SENATOR LATHROP: Senator Chambers. [LB564]

SENATOR CHAMBERS: Mr. Welsh, I've been listening to people read that, and some of them are drawing conclusions that they know better than to offer. When you read a constitution, you're looking at the organic law of the state, generalities that are meant to be adaptable to various situations. And to say that that statement in the constitution justifies doctors in refusing care to people on the basis of conscience is a total misreading of the constitution. To read the constitution that way would mean that I can shoot somebody because my conscience tells me I should be able to do it because that's a black person. They'd lynch us and do it on the basis of conscience and the Bible because the Bible said we should always be slaves because Noah's sons looked at him when he got drunk and was naked. So that entitled them to enslave us, and that was used in court decisions to justify slavery. So to take that statement from the constitution and say that the ones who put it there were envisioning this kind of trash is to dishonor those people, to misread the constitution, and show a willingness to twist anything to make sense, if they can, out of nonsense because the very people who used that could not make sense out of what they're trying to justify with it. So Senator Seiler and I simply disagree on our interpretation of what that meant. Generally, it had to do with a person's relationship to the government, not a situation where you have a medical system created which granted certain privileges to people. Nobody has a right to be a doctor. To be a doctor is a privilege. To exercise that privilege, there's certain requirements that must be met. If you're unwilling to meet the requirements, you can't exercise the privilege. And for those to whom I'm sounding too deep, I'll go to something that everybody understands: driving a car. The Supreme Court has said, driving a car is not a right, it is a privilege and, being a privilege, the Legislature can set standards and requirements that must be met before you can exercise that privilege. So if you do not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

have a driver's license that is in effect, you cannot drive; but if you do, you'll be punished for it. The people doing some of the kind of talking they're talking about know better, and they know the difference between a privilege and a right. And what these people are coming in here with this kind of stuff are doing is trying to convert a privilege granted by the state into a right. And I'll defy any senator who's got any sense to say that a person can practice medicine based on his conscience without even having attended medical school because it's the right of anybody to be a medical practitioner. They know better. [LB564]

CHRISTOPHER WELSH: I don't disagree with you, Senator. And this bill, LB564, Senator, provides a complete defense because it's based upon conscience. [LB564]

SENATOR CHAMBERS: I don't have any more. [LB564]

SENATOR SEILER: That's what I wanted to hear all along. (Laughter) Thank you. [LB564]

CHRISTOPHER WELSH: Thank you. [LB564]

SENATOR ASHFORD: Thanks, Chris. Okay, where are we? We're still on the...or the opponents? Where are we? [LB564]

SENATOR LATHROP: I think that might have been our last opponent, and we're... [LB564]

SENATOR ASHFORD: (See also Exhibit 14) Okay, do we have any neutral testifiers? Okay. [LB564]

SENATOR CHAMBERS: Leave well enough alone. [LB564]

SENATOR ASHFORD: But I have to say it. [LB564]

SENATOR CHAMBERS: I know it. (Laugh) [LB564]

SENATOR ASHFORD: Okay, why don't we...Senator Nelson, do you wish to...do you have the next bill as well? [LB564]

SENATOR NELSON: No, I do not. (Laughter) [LB564]

SENATOR LATHROP: I think that's Krist's bill. [LB564]

SENATOR MCGILL: It's Krist, yeah. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: Very well. [LB564]

SENATOR NELSON: All right. [LB564]

SENATOR ASHFORD: You could say that...well, never mind. Say what you must. No, I was just kidding. [LB564]

SENATOR NELSON: What was that? I could save us your time? No, I...thank you, Mr. Chairman. I do want to make a couple of comments here. Senator Seiler and I, if I can find what I'm looking for, went to different law schools. But in statutory interpretation and in constitutional interpretation we were told that you look at the plain face in the meaning of a statute. And when it says, there should be no interference with the rights of conscience, that's really not subject to interpretation. I mean, a court can try to do something with that, but it's pretty plain as far as I'm concerned. My introduction stated, and apparently it was missed by members of the committee, that healthcare professionals must provide advance written notice of their conscientious objections to the employer, and that's in Section 8(2). Now we've had some conversation here, and it seems to be that someone can be employed and along the way they can come up and say, oh, I can't do that because it's against my conscience and my beliefs. And federal employment law allows screening of employees and potential employees with regard to bona fide occupational affiliations or qualifications. The only exception to that really is that they can't discriminate on the basis of religion. So we can think of all sorts of horrible examples of perhaps 90 percent of the employees coming and saying, I can't do that anymore. But it really...that's implausible. That shouldn't happen any more if you've done a good job of screening your employees. With regard to conscience, our Supreme Court allows inquiry by courts into whether a conscience belief is sincerely held. And, you know, there are some things that are simply going to have to be settled in court. The other thing that I want to point out is Section 8(2). Let me come back to that again. [LB564]

SENATOR LATHROP: I'm sorry, I didn't hear that, John. [LB564]

SENATOR NELSON: Come back to Section 8(2). [LB564]

SENATOR LATHROP: A2 (sic)? [LB564]

SENATOR NELSON: Section 8 and sub (2). [LB564]

SENATOR MCGILL: 8. [LB564]

SENATOR LATHROP: Eight, pardon me. [LB564]

SENATOR NELSON: I think that I've already covered that, I guess, but you've got the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

violation of conscience. You have to provide notice, and the employer shall reasonably accommodate the conscience rights of its employee. The whole statute here, the whole attempt to protect the conscience and the matters of both the providers and facilities is to provide protection from doctors. And you've heard a lot of testimony here, and some of it's been a little emotional. But it's their sincere belief that the state and other factors coming in are going to affect their employment and their ability to practice medicine. The patient is important, yes, but so is the doctor or the other health provider, and I think we can't force people to act in accordance with their conscience. And if they choose to do that and advise their employer that they simply are under statutory rules or what this Legislature says or what anybody else says on behalf of the patient and the patient's rights, that they can no longer practice law, that they've violated standards. I think we've had a good discussion. I think I just want to stress that we have...this is masterly broad here because if you aren't broad and try to cover everything, then you're going to have loopholes. And it's helpful, I think, to be...to cover the waterfront here, so to speak, you know, cover everything we can, every possibility. Provide protection for the providers is what we're trying to do, but also reasonable access on the part of the patients. We've talked about referral. It doesn't specifically say that you have to refer that, but that can be amended in. What we do provide in here is that they have to give them...the doctor or the provider has to give reasonable information as to how they can access someone else. And, yes, there may be times when that's very difficult, and then it's up to the judgment of the doctor or the provider, I would think, especially in emergency situations that were spelled out. Finally, there is no blanket immunity here provided. We provide in this bill that there is civil liability on the part of the hospital or whatever if they violate what we have here. Basically, we're talking about administrative liability that...if there's violation of this bill. So with that, I will conclude and thank you for your attention. I would hope that the committee would take all things into consideration and send this out to the floor of the Legislature where we can have a long and healthy debate. [LB564]

SENATOR SEILER: Brad. [LB564]

SENATOR ASHFORD: Senator Seiler. [LB564]

SENATOR SEILER: I just have one question. [LB564]

SENATOR NELSON: Yes. [LB564]

SENATOR SEILER: And then...and you started to answer it. Is the genus of the conscience that you're referring to in the bill from the constitution? [LB564]

SENATOR NELSON: That's the basis of it, yes. [LB564]

SENATOR SEILER: Okay, that's what I wanted to know. That's what I was waiting all day for. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: Yeah. [LB564]

SENATOR LATHROP: Oh, boy. [LB564]

SENATOR CHAMBERS: Senator Ashford. [LB564]

SENATOR ASHFORD: Senator Chambers. [LB564]

SENATOR CHAMBERS: Senator, I think I heard you say we went to different law schools, is that correct? [LB564]

SENATOR NELSON: Senator Seiler and I went, I think, to different law schools. Creighton? [LB564]

SENATOR SEILER: No, Nebraska. [LB564]

SENATOR NELSON: I went to Creighton. He went to Nebraska. [LB564]

SENATOR CHAMBERS: You went to Creighton, where I did? [LB564]

SENATOR NELSON: And you and I went to the same law school. [LB564]

SENATOR CHAMBERS: Well, they'd be disappointed in you. Let me ask you this. (Laughter) [LB564]

SENATOR MCGILL: Oh. [LB564]

SENATOR CHAMBERS: Hold it, hold it. There's more to the story. You said that this is based on conscience, as in the constitution. [LB564]

SENATOR NELSON: Protection of conscience. [LB564]

SENATOR CHAMBERS: And that cannot be violated. There is also a provision prohibiting discrimination against a person based on religion. Are you familiar with that? [LB564]

SENATOR NELSON: Yes. [LB564]

SENATOR CHAMBERS: Are you aware that the Nebraska Legislature has made illegal certain substances that people use as a part of their religious observation, and they have for generations? Are you aware of that? [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR NELSON: I... [LB564]

SENATOR CHAMBERS: That violates their conscience and it violates their religion, and the court has said it's all right to do it. So neither one of you understands the constitution. You speak in cliches. You think in slogans. So by putting the word "conscience," then anything behind that is supposed to be allowed, and you know and he knows that that's not true. And if you didn't know it before, you know it now if you're a good student and will accept instruction. (Laughter) And I'm not going to charge you for it. (Laughter) [LB564]

SENATOR ASHFORD: Thank you. Okay, John. [LB564]

SENATOR NELSON: Thank you. [LB564]

SENATOR ASHFORD: Let's go to Senator Krist. We'll wait about...we'll wait for a minute or so to clear the room. Thank you all. All right, Senator Krist is up. [LB564]

SENATOR CHAMBERS: The crowd having thinned. [LB564]

SENATOR KRIST: (Exhibit 15) Good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Bob Krist, that's B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with the north-central portion of Douglas County and includes the city of Bennington. If I forget to say Bennington, they let me know about it. I appear before you today in introduction and support of LB300. LB300 is an attempt to bring our informed consent on abortion information into the 21st century. Our state has a law dating back to 1993 on informed consent, but for all intents and purposes it is not, in my opinion, in practice today in a manner that is...it was intended. To be more specific, accessing the information is far more complicated than it actually should be--again, my opinion. LB300 would provide for the Nebraska Department of Health and Human Services to create a dedicated link within their own Web site that brings together all of the informed consent on abortion information regarding...required by the 1993 law and adds a link to the Web site of the Endowment for Human Development, which has over 136 videos at 40 ultrasound development...developing unborn babies, should the patient elect to do so. LB300 would also require abortion facilities in Nebraska that have Web sites, those that have Web sites, to provide a link to the DHHS Web site on informed consent. It would be most effective and inexpensive and appreciated for the DHHS to be gathering all the informed consent information dictated by law in 1993, 2009, and potentially LB300, and providing all the information for one dedicated Web page within the DHHS Web site that will be keyword searchable. Being keyword searchable is important because hopefully more women and families will be able to easily access and quickly access the informed consent information, prior to their deciding, required by law. Since the state has a public policy of providing this information, it needs to be shared via the latest state-of-art

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

technology--again, my opinion--as the Web site of the Endowment for the Human Development contains, both moving ultrasound images and still shots. I have a handout for you, which I won't waste your time going through it with you. But I would note it is a copy of the revised statute, 28-327.01, Department of Health and Human Services; printed materials; duties; availability; Internet Web site information. Number one, "The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials." Herein lies the crux for this bill. The...that...this law made, or changed, in 1993 says "printed." We're in a new age of technology. What I'm asking is that this be available on the Web site and available if a printed copy is asked for, or printable information. You will notice in number: (a), "Geographically indexed materials," the department has elected to put this on their Web site; (b) "Materials designated to inform the woman of the probable anatomical and physiological characteristics of the unborn child," the department has refused several attempts, including my personal attempt, to have this put on the Web site and said, if the Legislature tells us to do that then we will do that; (c) "A comprehensive list of health care providers," the department has elected to put that on their Web site; and finally, "The Department of Health and Human Services," number (4), I'm sorry, "shall make available on its Internet Web site a printable publication of geographically indexed materials designed to inform the woman of public and private agencies." That, again, they've elected to do but have omitted (b). So in essence, all I'm asking them to do is come into the 21st century, put it on the Web site, let people make a decision. I'm not trying to come in between anybody and their physician or clinician. The availability is up to the woman up until 20 weeks by law in the state of Nebraska, but let's put the information out there and comply with our present informed consent laws. And also, I would bring to your attention, these are available in printed form, not to have any props, but props. These are available in printed form. The cost is, per 1,000 copies, \$1,811.78. It would be about \$1.81 per copy. I would say that, economically, this will be to our advantage because by putting it on the Web site it's a one-time change, a link to that Web site and no further effort on their part. The last thing I would bring to your attention is that what we're asking them to do in sending it to a common Web site, which is, by the way, a nationally renowned Web site, they keep up with all the changes. It would just be a link to that Web site. And the board of officers and directors--I'll make this available to you as well--is not left or right. It is not proabortion, or it is not prolife or prochoice. It is scientific information. The last thing I would say: In her brief after decisions, Chief Justice Sandra Day O'Connor said, this legislation is indeed on a collision course with science. As we learn more about the birth process, the gestation process, a woman's choice will be to make her decision. It's...this is not about...this particular bill is not about that choice. It is not about abortion. It is completely within the conception-to-20-week portion to allow informed consent, by statute, to be available to a woman or to a couple or to a family. With that, I would close and take any questions.
[LB300]

SENATOR ASHFORD: I...we...under this, these provisions, the Web site can be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

changed, correct, as information is made available? [LB300]

SENATOR KRIST: Absolutely. [LB300]

SENATOR ASHFORD: You know, I get a little worried, a lot worried about these kinds of things after Judge Smith Camp declared LB594 unconstitutional because of the nature of the information. Now the nature of the information is different here, slightly, than in LB594, but okay. [LB300]

SENATOR KRIST: I believe, sir, that the... [LB300]

SENATOR ASHFORD: Do you know what the difference is? [LB300]

SENATOR KRIST: The nature of this information is already in statute, and it is required by law to show every two weeks. It's in statute that way. What we're asking...when we first started... [LB300]

SENATOR ASHFORD: Is all your...is what your asking for is that what is in statute now, and I was trying to read and compare the two, but you're simply saying, put it on-line? [LB300]

SENATOR KRIST: Put it on-line. [LB300]

SENATOR ASHFORD: And it...is the...okay. [LB300]

SENATOR CHAMBERS: That's not true. There's no video in statute. [LB300]

SENATOR ASHFORD: Well, I'm...no, Senator Chambers. I was just trying to understand. You're right. There's no... [LB300]

SENATOR CHAMBERS: So he's not putting within the statute. He's putting a lot different from what's in the statute. [LB300]

SENATOR ASHFORD: Well, I...okay. [LB300]

SENATOR CHAMBERS: And I'm not blaming you. He said it, and it's not true. [LB300]

SENATOR ASHFORD: Well, I'm just trying to ask a question. (Laugh) [LB300]

SENATOR CHAMBERS: And I'm looking at you instead of him. [LB300]

SENATOR ASHFORD: No, I...my concern is with Senator (sic) Smith Camp's Opinion is if...you know, what's in statute in a written form is one thing. If it can be changed on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

minute by minute or second by second, that is another issue. I don't...my...anyway, that's for another discussion. But does anybody have any questions? Senator Coash. [LB300]

SENATOR COASH: Thank you, Chairman Ashford. Senator Krist, I have a few questions, and my first one is just procedural curiosity here. You sit on the Exec Board. I had a bill similar to this regarding blood banking, and it went to the HHS Committee. How did this bill end up here? [LB300]

SENATOR KRIST: Well, let me tell you how it ended up here. When we look at the jurisdiction of an individual committee and we look at the Web site and what's charged to your jurisdiction, all things related to abortion are referred to this committee. [LB300]

SENATOR COASH: Okay. [LB300]

SENATOR KRIST: So even though this only deals with the procedures and compliance with the statute and the policies and procedures within the department, which is 28-327.01, it was decided by a popular vote...by a vote in the Exec Board that this fell under the jurisdiction of your committee. [LB300]

SENATOR COASH: Okay, that's a reasonable answer. I was just curious because I had a blood-banking bill and it did much of the same kind of thing, and it went to HHS. So I didn't understand how...I was surprised to see this come to our committee. Okay. Thank you for providing the current law. Are you of the opinion that HHS is out of compliance with what the statute is right now? [LB300]

SENATOR KRIST: I am not. I am saying that we require them to do something that is not customer friendly by saying "printed." Now they have interpreted, they have interpreted, that two out of the three that I showed you they could put on the Web site and comply. Only the second portion, or (b), is the one that they have decided that they didn't want to put them with. [LB300]

SENATOR ASHFORD: Okay, and which is that, just so I can...? [LB300]

SENATOR COASH: B. [LB300]

SENATOR KRIST: B, materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child. That is not anywhere on the Web site. What we're asking... [LB300]

SENATOR COASH: This is not on the Web site? It could be. [LB300]

SENATOR KRIST: Could be, as is (a) and (c). [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR COASH: Now I...when you were going through this, I'm sitting here going, well, they must not do it because it's just going to cost a bunch of money. That's usually the reason we hear from HHS they won't do anything because it will cost two pennies. [LB300]

SENATOR KRIST: Agreed. [LB300]

SENATOR COASH: But then I go to the fiscal note, and it's zero. [LB300]

SENATOR KRIST: Right. [LB300]

SENATOR COASH: I don't know if anybody from HHS is here today. But if they've given you a reason as to why what's under section (b) is not on the Web site...I'll let them answer, but if you know or if you've been given a reason why they won't do that, because it's apparently not money... [LB300]

SENATOR KRIST: I had a meeting with the director and with the CEO, and they told me that they had made a decision that it was not required because they had the booklets available and boxes of them in the basement that they could give out upon request and that they were complying with the legislation because they were only required for printed information. That was the information that was given to me by the meeting--in the meeting. I asked them to go back and review it. And because other special interest groups and other groups had asked them to just make it available on the Web site and they refused, their answer was, if you tell me...if the Legislature tells me to do it, then I'll do it, if not, we'll continue to do it the way we're doing it until our boxes of books are gone. [LB300]

SENATOR COASH: Okay, well...so my question for them, if they're listening or watching, I'd like to know when their boxes are empty, so that...because, presumably, at that time maybe they'll say, well, now that we don't have any printed materials, we'll put it on the Web site, and they've already told us it won't cost any money to do that. [LB300]

SENATOR KRIST: Senator Coash, if I could respond to your question a bit philosophically? I've always tried to go back to the department, in this case, or any department and ask them to make the change without a statute change. In this particular case they said, if you tell me to do it, I'll do it. [LB300]

SENATOR COASH: Okay, thanks. [LB300]

SENATOR ASHFORD: Senator Chambers. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: Senator Krist, if you don't realize that your bill is about abortion, I do. Now you say, and I would say, that things are described in statutes by means of words. And if you would give a pictorial image of what those words describe, it would be entirely different. For example, you could be talking about sexual assault, and you could use the term "genitalia." Then you're going to put it on the Internet, and you've put a picture of a woman's vulva and genitalia and a man's penis and gonads. Would that be what you'd want? And it would be on there for everybody to see it, child and everybody who accessed it. In other words, what is described in words does not translate when it's presented as a pictorial image. But here's what I want to ask you: You are requiring videos? [LB300]

SENATOR KRIST: In the new words in my bill, I require videos because videos represent the most current technology and description of...for a person to make a decision, which is complying with informed consent. [LB300]

SENATOR CHAMBERS: They don't need to see videos of what you're talking about, but that's my opinion. [LB300]

SENATOR KRIST: Okay. [LB300]

SENATOR CHAMBERS: Why do you refer to a fetus as an unborn child? [LB300]

SENATOR KRIST: Philosophically, morally, spiritually, you and I are never going to agree on this conversation. [LB300]

SENATOR CHAMBERS: But I'm asking you why you do it? [LB300]

SENATOR KRIST: Because I believe life begins at conception and ends at natural death. [LB300]

SENATOR CHAMBERS: Then why, in line 9 on page 2, do you use the word "fetus," then on lines 21 and 22 you use "unborn child?" You used them, both words. Why? Did you draft this or have somebody draft it? [LB300]

SENATOR KRIST: I turned my bill drafting over to Bill Drafters, but thank you for pointing that out. I'll bring an amendment that changes everything to "unborn child." [LB300]

SENATOR CHAMBERS: I think we ought to change it all to fetus if it gets out there. [LB300]

SENATOR KRIST: Well, that's where you and I are not going to agree. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: So we'll have...we can easily take eight hours on this, if it gets out there. But you are not just talking about the department. You are talking about healthcare facilities. This is about abortion, and you're trying to put as much burden as you can on those who provide abortions. Be honest with me and yourself. Isn't that what you're doing? And every time you get a chance to do it, you're going to do it. [LB300]

SENATOR KRIST: I am trying to make sure that within our statutes that require the proper informed consent that the person has the best information to make the decision that they have. As a lawmaker, I voted last year to make sure that we make it legal for a woman to decide to have a...to terminate the pregnancy up until the 20th week because of scientific definition of pain and the nervous system. [LB300]

SENATOR CHAMBERS: But you don't just say that. You go into her business, you try to do everything you can to burden that decision, to make it impossible, if you can. So you're going to put burdens on healthcare facilities when you claim that you're upset because the Department of Health and Human Services didn't put something in their information that you thought should have been there. So why do you drag the healthcare facility into it, a private business owned by a private individual, and you're going to have the government dictate what has to be on the Web site? [LB300]

SENATOR KRIST: Have you had a surgical procedure in any facility around the state where informed consent did not... [LB300]

SENATOR CHAMBERS: I didn't understand. What did you say? Did I...have I had what? [LB300]

SENATOR KRIST: Have you ever had a surgical procedure or a procedure done in a hospital or a private... [LB300]

SENATOR CHAMBERS: I've never had a surgical procedure of any kind. [LB300]

SENATOR KRIST: Okay, then let me tell you what will happen if you do. You'll go in and they will review, in terms of your consent, they will review all of the hazards--psychological, physical--whether... [LB300]

SENATOR CHAMBERS: That has nothing to do with what I'm talking about. I'm asking why you're compelling a privately owned business to put something on its Web site and dictate what it puts there and where they have to have a link? [LB300]

SENATOR KRIST: I think that the Web site, the requirement, if you read the intent or the words, it says that I want them to refer back to the department's Web site. I don't care what they put on their Web site. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR CHAMBERS: You are dictating what they must put on that Web site. [LB300]

SENATOR KRIST: To refer back to another Web site. [LB300]

SENATOR CHAMBERS: You are dictating speech. You're telling them that the government requires you to speak in this fashion, and this is what you must say. That's what you're doing, isn't it? [LB300]

SENATOR KRIST: If you think that this needs to be amended to take out a speech requirement, then that would be another discussion that we'd have to have. But I don't think I am. [LB300]

SENATOR CHAMBERS: No, I'm asking you what you're doing. Am I misrepresenting what you're doing? Are you telling a private business what it must put on its Web site and what it must say in the speech that it must put on its Web site? [LB300]

SENATOR KRIST: In the interest of patient safety, we require facilities to put things...to put a link back and to provide informed consent information across the board. [LB300]

SENATOR CHAMBERS: So you're dictating the speech that this private business must provide because the government said so. [LB300]

SENATOR KRIST: Is that facility licensed in the state of Nebraska? [LB300]

SENATOR CHAMBERS: That's what you're doing. Say it again? [LB300]

SENATOR KRIST: Is the facility licensed? I'm sorry, I didn't mean to ask a question from this side. [LB300]

SENATOR CHAMBERS: No, that's all right. We're having a back and forth. [LB300]

SENATOR KRIST: Okay. [LB300]

SENATOR CHAMBERS: I don't mind. You're a senator. That makes a difference. [LB300]

SENATOR KRIST: If the facility is licensed, we're already dictating what that facility is going to do in terms of providing a service and maintaining the safety margin for the citizenry. [LB300]

SENATOR CHAMBERS: You're dictating speech here though. You are dictating speech. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR KRIST: Okay, I think I would disagree. [LB300]

SENATOR CHAMBERS: The freedom of...well, you can disagree all you want to. But the freedom of speech is guaranteed by the U.S. Constitution. Not only can the government not tell a person what to say, the government cannot tell a person what he or she may not say. And you are dictating what this private business must say on its own property that it pays for. And you don't believe that, so I won't argue with you. [LB300]

SENATOR KRIST: Okay. [LB300]

SENATOR CHAMBERS: But I'm just letting you know that this is about abortion. He knows it's about abortion. Senator Coash knows. Everybody knows it's about abortion except you. And you know it, but you won't admit it. And it shows that you're skeptical about what you're doing so you have to cloak it as something other than what it is. Say what it is. It's about abortion, and you want to make it as difficult as possible, don't you? [LB300]

SENATOR KRIST: No, sir, I do not. [LB300]

SENATOR CHAMBERS: Okay, I accept what you're saying. [LB300]

SENATOR KRIST: Okay, thank you. [LB300]

SENATOR CHAMBERS: But I don't believe it. (Laughter) [LB300]

SENATOR ASHFORD: Thank you, Bob. [LB300]

SENATOR CHAMBERS: That was too... [LB300]

SENATOR ASHFORD: Thank you, Bob. Okay, let's see, do we have some proponents for this bill? How many proponents do we have today? Okay, and...okay. Come on up. [LB300]

TRISH LEIFERT: Hello. [LB300]

SENATOR ASHFORD: Hello. [LB300]

TRISH LEIFERT: My name is Trish Leifert. [LB300]

SENATOR ASHFORD: Trish, can you spell your last name for us? [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

TRISH LEIFERT: (Exhibit 16) L-e-i-f-e-r-t. Okay, on Tuesday, September 1, 2009, I went to Planned Parenthood of Lincoln. I had called a couple weeks ahead of time to schedule. During that phone call I was told that there would be protestors standing outside when I would arrive. The woman told me to just ignore them and try to get inside as quickly as possible so they wouldn't bother me. I showed up with my child's father. The receptionist showed us a table of prices of the procedure based on how many weeks I might be. We met with a woman in a room and talked. I understood that she was asking me if I understood what I was about to do for liability reasons. The appointment was for an abortion. I didn't mention that. I'm sorry. She wasn't exceptionally kind. Soon I was called back for the ultrasound. A younger, red-haired woman began a transvaginal. She turned a small screen to me and said, you don't have to look at this, I just have to put it where you can see. I'd had this kind of ultrasound before, but they weren't this intrusive. She didn't handle me well. I felt violated. She continued for several minutes until, finally, she said, hold on, let me go get the nurse. When they both came back into the room, the nurse took over and reminded the redhead woman that when you're reading the screen, everything is in reverse. It made me uneasy to know that she wasn't well trained. Then another woman opened the door to the exam room and stood in the open doorway to speak to the nurse while I sat, exposed, towards the doorway. People walked by in the hallway behind her. As a private person, I was mortified, almost in shock. Once the nurse finished I was told to go back to the waiting room. Before I got there, I was asked to come back because the doctor was unhappy with our measurements and wanted to do it again himself. He didn't greet me, make eye contact with me, introduce himself, or ask how I was doing. To my relief, he said, we can just do an abdominal. He instructed me to pull my pants and underwear down some. I didn't...I did, just slightly, and he said, more. I expected him to say, okay, anytime. More aggravated, he said, more. I kept moving them unsurely, then he grumbled, slapped his hands on each of my hips, and grabbed both of my garments and pulled them down, nearly mid-thigh. To sum it up, I ended up leaving that day without having the procedure because I felt really uncomfortable. When I went outside and met my child's father...and I would come later to learn about possible complications with the procedure for the first time later. I am in support of LB300 because I know firsthand that, had I gone through with the abortion, it would have only been due to lack of information. The ultrasound cannot be replaced by diagrams, words, or pictures. If something like that had been available for me on-line, then I might not have had to live through this awful experience of learning information as I was being poorly handled and very close to having the irreversible procedure. I could have made that choice in the comfort of my own home, and I would hope that everyone would have that available to them. [LB300]

SENATOR ASHFORD: I don't see...yes, Senator Coash. [LB300]

SENATOR COASH: Thank you, Senator Ashford. Ms. Leifert, right? [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

TRISH LEIFERT: Um-hum. [LB300]

SENATOR COASH: Thanks for making that choice. Do you feel comfortable in sharing the name of the doctor that you just described? What was the name of that doctor? [LB300]

TRISH LEIFERT: C.J. LaBenz. [LB300]

SENATOR COASH: Okay, let the record reflect that's how he treats women. Thank you. [LB300]

SENATOR MCGILL: Senator Ashford. [LB300]

SENATOR ASHFORD: I don't see...yes, Senator McGill. [LB300]

SENATOR MCGILL: Yeah, I don't think any of us would disagree that that behavior is appalling and, frankly, you could have probably pressed some sort of charges against him in that way. And, you know, did you do any research on-line before going there and making this decision? [LB300]

TRISH LEIFERT: I have gone to... [LB300]

SENATOR MCGILL: Because there is information out there in the Internet on abortion and... [LB300]

TRISH LEIFERT: Yeah, yeah, and I did. I looked at a lot of different things. But what I didn't see, which my testimony here describes--I didn't get to that--was that it was...the screen that I saw that showed my live fetus that made...gave me a change of heart, and that's why I think that's important to see beforehand and not right there when you're already in it. [LB300]

SENATOR MCGILL: And I can see that. I mean, that...obviously, the information is on the Internet right now. And I don't know how I feel about this bill right now. I am somebody who believes abortion should remain legal and rare, but I'm not coming in totally opposed to this. I'm just trying to figure out, you know, what is already available, if this bill would really put anything else on the Internet that isn't already there for a young woman to find. But thank you for coming and sharing your experience with us. [LB300]

SENATOR LATHROP: Well, wait a minute. [LB300]

SENATOR COASH: Hold on a second. [LB300]

SENATOR LATHROP: Wait, wait, wait, wait. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR ASHFORD: Just one second. [LB300]

SENATOR COASH: One more question. [LB300]

SENATOR ASHFORD: So we have another question. [LB300]

TRISH LEIFERT: Oh, I'm sorry. [LB300]

SENATOR DAVIS: It's just a question. [LB300]

SENATOR ASHFORD: Senator Davis. [LB300]

SENATOR DAVIS: In light of what Senator McGill said, do you think that these videos' availability makes them more rare, makes abortions more rare? She said she believed in abortion legality but making it rare. [LB300]

TRISH LEIFERT: I...that's...yeah. I don't really...I just know that it was changing information for me. And if it would have the same effect on other people, then it should be available. I just think that I should have been able to see that before I went in for the appointment, and I think that as much information as is there should be available to everyone before they make the choice. [LB300]

SENATOR DAVIS: So it would have been helpful in your situation? [LB300]

TRISH LEIFERT: Yeah. [LB300]

SENATOR LATHROP: Do you...did you look on the DHHS Web site before you went there? [LB300]

TRISH LEIFERT: No, I did not. [LB300]

SENATOR LATHROP: Okay, thanks. [LB300]

HEATHER BERNT: (Exhibit 17) My name is Heather Bernt, B-e-r-n-t, and I'm a resident of Lincoln, Nebraska. I'm here today in support of LB300. In 1999, when I was 17 years old, I found out I was pregnant. I went to a pregnancy center where a counselor informed me of my options while I cried. My best friend asked about abortion. The counselor then showed us a model of a preborn baby. My best friend yelled, how could you show that to her? She grabbed my hand and pulled me out of the room. We went to her home, called the first number that said abortion, set an appointment. I was so surprised at how easy it was to set this up by myself at 17. I don't remember the name of the facility we went to. But I did check with my mother, and she said it was in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

Bellevue. I vaguely remember one of us signing something, but we weren't given any documents. When my name was called, I went back to a room with a nurse and doctor. The only thing the doctor said to me was, it's about the size of my pinky nail, as he held up his little finger, and my child was killed. I was given medication, aftercare instructions, and we left. It was only after that I started to think about what I had done, then life started to get hard. I 100 percent regret my decision, and I could not be alone with these feelings if I tried. I meet more and more women every year who have been devastated by their choice through my work with the Silent No More Awareness Campaign and with Rachel's Vineyard. If, per the 1993 law, I was supposed to get information about consequences, risks, and fetal development, I can tell you that I did not, unless you count the size of a pinky nail enough information about fetal development. I take responsibility for my decision, but at 17 I had no idea what I was doing. I didn't think about my baby as a baby. I didn't know about the consequences, about how depressed and worthless I would feel. It took me ten years before I decided to get help, until I realized I was not alone and it was okay to grieve this loss. As far as informed consent goes, I don't understand how withholding facts from a woman facing an unplanned pregnancy can be considered helping her. If I, as a mother, were faced with the decision of whether to take my child off life support, I would easily receive all of the information I needed. I wouldn't be expected to Google it or to call a number to order a brochure. I can tell you from experience that when I found out I was pregnant the last thing I would have wanted to do is call one more person or sort through everyone's opinions on-line before getting to an objective Web site. I wish I would have had all the facts at my fingertips. I wouldn't have made such a hasty decision. I would have had a beautiful 13-year-old son or daughter right now. Withholding or making it difficult for a woman to receive the facts is nothing more than an insulting sales strategy. Women are not too fragile to handle the truth. Informed decisions are better decisions, and it's a woman's choice whether she wants to click on that link that will help her understand the decision she is trying to make, and it's our duty to make it easy for her. Thank you.
[LB300]

SENATOR MCGILL: Brad. [LB300]

SENATOR ASHFORD: Yes, Senator McGill. [LB300]

SENATOR MCGILL: I appreciate you coming here and... [LB300]

HEATHER BERNT: Thank you. [LB300]

SENATOR MCGILL: I'm sorry for everything you've gone through. I'm sure it's really difficult. And I just want to make it clear that, as I'm asking questions...like, I'm here on my phone, and I just typed into the search engine of Google "unborn baby video," and a whole bunch come up. And so I just want to make it clear that that information is out there for any woman who would be in your position to find and that the...I actually don't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

have a problem putting the stuff that's currently in statute on-line, and that's fine. But it's still not going to guarantee that a woman goes on-line and looks for it either. I mean, like I said, I could just Google that video and it...you know, there's a video right here. And so it's just something I guess we need to consider, if this bill actually will do anything to actually educate women if they're not choosing to go on-line and look at it. So that's kind of what I'm debating a little bit here. [LB300]

HEATHER BERNT: I think if I, right now, was going to decide whether or not to have an abortion right now and I was a teenager, I would probably look at the abortionist Web site. And if I saw a link that said there is a Web site that has objective information on it, I might click on that because I wanted an objective opinion. I don't know. If I was thinking that I have a problem and I want to take care of it, I don't think I would Google videos on an unborn baby. I would go to an abortionist Web site, and then I would see that there is an objective Web site. And I would click on it, and I would see that it is a baby. And that's probably the reason I made my decision is I didn't think of my child as a baby. And I know we've come a long way since 1999, so a lot of people do know that it is. But I didn't. [LB300]

SENATOR MCGILL: Um-hum. [LB300]

HEATHER BERNT: And I wish I would have had an ultrasound that was advanced. [LB300]

SENATOR MCGILL: Well, we do have those now. So in your case, you know... [LB300]

HEATHER BERNT: Yeah, I know. That's great, and I do think it's important to have those on an abortionist Web site. [LB300]

SENATOR MCGILL: I appreciate you being here, so thank you very much for answering my question. [LB300]

HEATHER BERNT: Um-hum, thank you. [LB300]

SENATOR ASHFORD: Thank you very much. Next proponent. [LB300]

JUSTINE KYKER: My name is Justine Kyker, K-y-k-e-r. I am here to support LB300. I was 19 years old and in between colleges when I suspected I was pregnant. I had gone to Planned Parenthood for birth control pills earlier in that May, but I didn't have a period all summer. And finally, I went to a family doctor in my hometown, and he confirmed that I was pregnant. And one of the doctors reached in his drawer and pulled out pictures of couples that wanted to adopt a newborn baby, and I just...I had this ideal notion of being a surrogate mother. I decided I wanted to place my baby for adoption, and I told my family and friends of that decision. After that, I moved back to Des Moines to go to a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

different school, and I had a conversation with my dad that was angry. And a friend of mine was right there with the phone book with the number to Planned Parenthood in Des Moines that did the abortions. I didn't even know Planned Parenthood did abortions. I just got my birth control pills from them. I called the number, and she asked how far along I was. And I said, three months. I didn't know anything about...this was 1988. I didn't know anything about gestational weeks. I just thought it was trimesters. And she said I needed to come in right away, told me to come in the next morning with \$200 cash. I didn't know where I was going to get the cash, and I didn't tell anyone. I just returned my textbooks. And they never said, for your abortion procedure. They just said, you need to come in with \$200 cash. In the back of my mind, I knew I was having an abortion, but I thought I was just calling for information. When I got to Planned Parenthood, I paid my \$200 and...I'm sorry. I guess I could...I'm sorry. [LB300]

SENATOR MCGILL: It's okay. [LB300]

JUSTINE KYKER: I've given my testimony before, and I... [LB300]

SENATOR ASHFORD: No, it's good. Just... [LB300]

SENATOR MCGILL: It's okay. [LB300]

JUSTINE KYKER: I just have to say that it was excruciatingly painful. The doctor just walked in. I never met him. He never said a word to me. He walked in and aborted my baby. I was left sitting in a pool of blood and went to the recovery room, where three or four other women were lined up who had just aborted their babies. And I was...I didn't even know how far along I was, and I just...I went into denial and depression for several years. I remember looking at a medical textbook on East Campus--this was in the early '90s, before the Internet--and there was a six-week ectopic baby. And I just saw it...well, I...going to look back at my medical records, I think I was 15 or 16 weeks, but I thought, you know, that was...six weeks was the earliest you could have an abortion. My baby already had fingers, toes. I ended up having several pregnancy complications in my future pregnancies. I got married. I had an ectopic pregnancy, which is a common complication after an abortion. And I just remember the doctor said, you know, we need to take this ectopic out, you need to have surgery Monday. But my baby was still alive because my hCG levels were still rising, which means my baby still had a heartbeat. This was six or seven weeks. And before the procedure, I just remember laying there, and the nurse said, you just need to breathe, and that's just what the nurse said at the abortion clinic because I was screaming. She said, you just need to breathe. And I went under, and I lost that baby. And... [LB300]

SENATOR MCGILL: You don't have to go on if you don't want to, if you...yeah. [LB300]

SENATOR ASHFORD: No, but if you want to complete it, we have time. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

SENATOR MCGILL: Yeah. [LB300]

SENATOR ASHFORD: It's up to you. [LB300]

SENATOR MCGILL: Yeah. [LB300]

SENATOR ASHFORD: I'm just giving you the time you need. Just take the time you need. [LB300]

JUSTINE KYKER: I just...you know, it was that image in the textbook. I mean, giving women this information...and this...I mean, it's a common image of the ectopic. I think it's this one, but I have it on my...I mean, if I was given these images, known what I was aborting...and this was...I mean, six weeks is even less developed than what I was when I had the abortion. And this is...the six-week ectopic, I mean, the baby has fingers, little eyes. You know, this is...in a surgical abortion you have to be eight weeks before they even... [LB300]

SENATOR ASHFORD: Why don't we do this? Why don't we see if there are any questions or comments from the committee, and then we'll...is that okay? [LB300]

JUSTINE KYKER: Yeah. [LB300]

SENATOR ASHFORD: You doing okay? All right, because you don't have to...you don't... [LB300]

SENATOR LATHROP: No, I...maybe just a comment. I think it takes an incredible amount of courage to come down here today. You know, when you come and tell a story as personal as this, it's very compelling, and thanks for coming down. [LB300]

SENATOR DAVIS: Yes, I'm very...admire you very much for doing that. [LB300]

SENATOR ASHFORD: Okay, thank you. [LB300]

JUSTINE KYKER: Thank you. [LB300]

SENATOR ASHFORD: Does anybody else...okay. [LB300]

JULIE SCHMIT-ALBIN: (Exhibit 20) Mr. Chairman and members of the committee, my name is Julie Schmit-Albin, S-c-h-m-i-t-A-l-b-i-n. I'm executive director of Nebraska Right to Life, appearing today in support of LB300. LB300, as Senator Krist said, seeks to update and improve the informed consent for abortion information which has been in statute largely since 1993. What was state of the art in 1993 is woefully lacking 20 years

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

later. People are now used to accessing information on their smart phones, their tablets, and their laptops. There was no widespread searching of the Internet in 1993, and 4D ultrasound was yet on the horizon. LB300 directs DHHS to make a dedicated Web page within its own Web site for the purpose of displaying all of the informed consent for abortion information in one easily accessible place. It acknowledges technological advances since 1993 in that it would link this Web page to the Web site of the Endowment for Human Development, which has over 100 videos of unborn babies developing in the womb, as well as many still shots at gestational increments from fertilization through birth. This DHHS Web page would, in turn, be linked to by Nebraska abortion facilities' Web sites. And the purpose for bringing all the information into one Web page and upgrading to include 4D ultrasound images is that, Senator McGill, Nebraska does have a public policy that says, we are going to provide women with the informed consent information. So if we have that public policy in place, then doesn't it behoove the state to have the most state-of-the-art, up-to-date information and not be back in the dark ages in terms of the Web site and that information? In practice, that information is not getting to the people who need it. In '93, when the provisions were added for the state to provide printed materials of fetal development, the complications and risks of abortion, and a list of geographically located agencies who assist with pregnancy, the theory was that the...I was here in '93. The theory was that the abortion facilities would have, on hand, the booklets that they'd be able to give out or at least mail. In the '93 statute, there is a provision that you mail, by certified mail, 72 hours in advance of the abortion appointment. In a meeting with DHHS staff in December, we were told there was very little demand for these fetal development booklets that Senator Krist put up, and that's because the abortion facilities decided they fulfilled the requirements of the law by either stating over the phone or inhouse counseling on a prerecorded message over the phone that, by law, we have to tell you there is this information at DHHS, oh, by the way, go call this 800 number. And how many young girls are going to grab the 800 number on this prerecorded message, call DHHS today, wait three or four days for a booklet to arrive in the mail? It doesn't happen. These young women are on their smart phones and their tablets. They need the information immediately. Your point about Googling is well taken. That was the first thing I thought: Just go Google. But our state has a public policy. They should be up to speed with the technological advances. There should be no reason why they should be in the dark ages on this information. The point of linking...the point of the abortion facilities linking to this, in the state of Kansas this law passed and Planned Parenthood of Kansas City-Greater Missouri (sic), I think it's called, does have a link on their Web site to the Kansas Department of Health informed consent Web site. So when Senator Chambers was mentioning you're forcing a private business to do this, Planned Parenthood in Kansas City doesn't seem to have a problem with it. So I would just, in the interest of time--I see I'm out of time--I'll pass my information in. But I just feel that we need to get up to speed with technological advances. I believe it's happening in other areas of the law that you deal with here, and we really appreciate you taking a look at this. With your handout I do have four pages of the videos and still shots from the Endowment for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

Human Development Web site attached, and also the board of directors for the Endowment for Human Development and their policy statement of bioethical neutrality. As Senator Krist said, they're not coming from any side, one side or the other. They're completely neutral. There's doctors, Ph.D.'s, on this board of directors, and that's the kind of information that I think everybody should want to have. [LB300]

SENATOR ASHFORD: Senator McGill. [LB300]

SENATOR MCGILL: Maybe this is more of even a question for Senator Krist, but I am just dumbfounded that HHS doesn't do this. Like, seriously, I'm dumbfounded. [LB300]

JULIE SCHMIT-ALBIN: Yeah, so are we. [LB300]

SENATOR MCGILL: And, like, have people even just gone to the Governor and asked why this hasn't been something that... [LB300]

JULIE SCHMIT-ALBIN: Well, as Senator Krist said, Senator, we had a meeting. I had a meeting with DHHS in December, and I was told three times during that meeting, if the Legislature directs us to do this, we'll do this. They told the same thing to Senator Krist a few weeks ago in a meeting. They want it in statute. That's all I can tell you. [LB300]

SENATOR MCGILL: I'm just really stunned. And I will admit, even just as I've been on the...on here even, going to DHHS's Web site. Is there some stuff on there already? [LB300]

JULIE SCHMIT-ALBIN: Yes. [LB300]

SENATOR MCGILL: And I couldn't find that, frankly. [LB300]

JULIE SCHMIT-ALBIN: I know. It's very difficult to find. [LB300]

SENATOR MCGILL: But I just got on there. [LB300]

JULIE SCHMIT-ALBIN: Yes. [LB300]

SENATOR MCGILL: So I do see that validity in what you're doing. [LB300]

JULIE SCHMIT-ALBIN: Yeah. [LB300]

SENATOR MCGILL: I want to more thoroughly look over some of the additional things or the language on that other...the abortion sites, Web sites, and stuff, and what language maybe might fit. [LB300]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

JULIE SCHMIT-ALBIN: And we can provide you, Senator, the page, when you find it, what is there. Actually, it's in different parts of the DHHS Web site. That's why our effort is to bring it all to one dedicated Web page on informed consent, so she can find it easily and not have to be searching where is the list of agencies I'm supposed to be able to go to for alternatives to abortion, where is the fetal development, you know, where's...it's just all over the place, so. [LB300]

SENATOR ASHFORD: I mean, it does seem to me that we've had a...since I was...'93, and I was there, too, at that time, it seems to me that, since that time, there has been a fairly dramatic decrease in abortions, and my guess would be information was a big part of that. People are better informed of the process of birthing, the birth process. [LB300]

JULIE SCHMIT-ALBIN: Um-hum, right. [LB300]

SENATOR ASHFORD: So I'm sure that's part of it. [LB300]

JULIE SCHMIT-ALBIN: Um-hum. [LB300]

SENATOR ASHFORD: I mean, what else, you know...okay, good. All right, thank you. Any other proponents? How many other testifiers do we have today? We're starting to...okay. How about opponents? Do we have opponents here today? [LB300]

SENATOR MCGILL: Yeah, there are... [LB300]

SENATOR ASHFORD: Oh, I'm sorry. I get...okay. All right. [LB300]

GREG SCHLEPPENBACH: (Exhibit 18) Senator Ashford, good afternoon. Members of the Judiciary Committee, my name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h, and I am the director of prolife activities for the Nebraska Catholic Conference. I want to put the conference on record in support of LB300. I won't belabor this. I just want to mention some personal experience in knowing about women who have seen ultrasound videos right here as a part of going to have an abortion and changed their mind because they saw the ultrasound videos. I think this just is commonsense legislation. It, as Julie said, brings this kind of material into the 21st century. We strongly support this kind of commonsense legislation, so we urge your advancement of LB300. [LB300]

SENATOR ASHFORD: Thanks, Greg. Any questions of Greg? I don't, I think, don't see any. Thank you. Okay, let's go to the...I'm sorry, one more proponent, and then we have an opponent. [LB300]

NANCY RUSSELL: I'm Nancy Russell, Nancy R-u-s-s-e-l-l, and I was just going to try to encourage you, please, to use basic compassion and move this bill to the floor because you hear all the time women who don't know, I didn't know it was a baby, even in this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

day and age. You think everybody is informed, but they're not. I didn't know it was a baby. There's 50 million. We heard three stories. There's 50 million of them. And every time there's an issue of abortion that comes before this chamber, it's blood, sweat, and tears to try to get out what needs to be done. And I'm not going to take a lot of your time, but I really would encourage you. There was a story just a few days ago that a father came out of the abortion facility and was telling the people who were there praying, thank you, thank you for praying, my wife and I looked at the ultrasound and we decided to save our baby. So it's very, very important that people just have the information. What harm is just giving them the information to make a choice that will affect them the rest of their life? And thank you for your work. Any questions? [LB300]

SENATOR ASHFORD: I don't see any. Thank you very much for coming. All right, opponents. I think we're ready for the opponents' side. [LB300]

TRACY DURBIN: (Exhibit 19) And I apologize in advance. The attached bill--laws--I think got attached to my last testimony instead of this one, so there's only one copy there. But you should have all of them in front of you. So again, good afternoon, Senator Ashford and members of the Judiciary Committee. I'm Tracy Durban, director of quality and risk management for Planned Parenthood of the Heartland. I welcome this opportunity to talk with you about LB300, which we oppose. Planned Parenthood of the Heartland encompasses Nebraska, Iowa, Arkansas, and eastern Oklahoma. In Nebraska, we're one of the providers of abortion, which is just a small portion of the breadth of reproductive healthcare services we provide. As a reputable and ethical healthcare provider, we adhere to the long-established principles of informed consent. We provide a woman any and all of the unbiased information that she needs and wants in order to make a decision about her pregnancy, whether it be to carry to term, to become a parent, to terminate her pregnancy, or to turn to adoption. Nebraska has a host of informed consent laws that are uniquely targeted to a woman making a personal decision about abortion. And, for your review, you do have those laws in front of you. Among the many requirements, we tell a patient that she can access the information treated in LB300 through the Department of Health and Human Services. This includes information on fetal development. And those boxes of those booklets, we have those, too, at our site, and we hand those out. In a November 30, 2012, Omaha World-Herald article, a proponent of this policy opined that the fetal development information currently available on the DHHS Web site is difficult to find and has been little used. If this is the case, it's a matter to be taken up with the department. It's not the responsibility of private medical providers to fix this perceived problem, if it indeed is a problem at all. The sole intent of this bill is to harass abortion providers and try to compel a woman to review materials that may not or may be relevant to her decision. It's not acceptable for the state to insert itself into these personal medical decisions, and it's certainly unacceptable to impose such a mandate at the behest of organizations that have narrow and extreme ideological and political agendas. To be given careful consideration is the state requiring private organizations to post specific information on their Web

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

sites. This is bad public policy. What group is going to be here next year asking you to create a law to post state-mandated information on its Web site. Lastly, LB300 raises serious questions related to the commerce clause. States cannot regulate activity outside of their borders. Mandating that we post a particular message and link on our Web site is to force Nebraska law into our interactions with patients, volunteers, and other Web site visitors from Iowa, Oklahoma, Arkansas, and any other state. If the Legislature tries to regulate our Web site, it could be regulating interstate commerce. This is a power reserved solely to Congress under the United States Constitution. LB300 is unacceptable and does not deserve further consideration. I ask you to indefinitely postpone the bill. I thank you for your time and attention. [LB300]

SENATOR ASHFORD: Yes, Senator Coash. [LB300]

SENATOR COASH: Thank you, Senator Ashford. Is the main crux of your opposition Section 3, which is what requires Planned Parenthood to post this? [LB300]

TRACY DURBIN: Yes, sir, it is. [LB300]

SENATOR COASH: Okay. So if that were amended out, you probably wouldn't care if... [LB300]

TRACY DURBIN: Right. [LB300]

SENATOR COASH: Is that accurate? [LB300]

TRACY DURBIN: We have no beef with what the Department of Health and Human Services puts on their Web site. [LB300]

SENATOR COASH: Okay. [LB300]

TRACY DURBIN: We believe that a woman deserves to have as much information as possible. And if they want to post that on their Web site and have links to those, that's perfectly acceptable to us. [LB300]

SENATOR COASH: Okay, because I think I agree with you that HHS should be...they need to fix this. And I do understand your objection to Section 3. Maybe we could get your help in pressuring HHS. Imagine this: You and Julie go to HHS together (laughter) and say... [LB300]

TRACY DURBIN: That would be a red-letter day, yes. [LB300]

SENATOR COASH: ...because you say you're about informed consent. I mean, join the fight on this then. I mean, I believe if you're for informed consent, put that in your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

testimony, we need you to be putting heat on HHS to do that as well. And I do understand your objection to Section 3. [LB300]

TRACY DURBIN: Thank you, Senator. [LB300]

SENATOR COASH: Dr. LaBenz practice for Planned Parenthood? [LB300]

TRACY DURBIN: Yes, he does. [LB300]

SENATOR COASH: Did you hear the testimony of Ms. Leifert? [LB300]

TRACY DURBIN: I did. [LB300]

SENATOR COASH: And you want to comment on that? [LB300]

TRACY DURBIN: I find it very disturbing. I am very upset that she had an experience that was negative in any way. I take a lot of personal pride in making sure that the experience that the women have who come to our facility is as good as can be expected under the situation and they are treated with compassion and kindness at all times. And it's very disturbing to hear a story like that, and I wish that had been reported to somebody in authority. Perhaps it was and I just didn't know about it, but I wish I had heard about it. [LB300]

SENATOR COASH: Well, it's a matter of record. And in her testimony she said, he grabbed his hands on each of her...of my thighs, grabbed her garments, pulled them down to nearly mid-thigh while he grumbled. I hope media reports on that because this is the kind of guy that works for you. And I'm not putting that on you. That was on him. [LB300]

TRACY DURBIN: I understand. [LB300]

SENATOR COASH: But pretty disgusting. [LB300]

SENATOR DAVIS: You said you think as much information as should be available to a prospective person who wants to have an abortion. [LB300]

TRACY DURBIN: Yes, sir. [LB300]

SENATOR DAVIS: So does Planned Parenthood run videos on their Web site? [LB300]

TRACY DURBIN: I actually have to say that I do not have the information on that. I haven't been to our Web site lately. I am not a provider. I am not in the clinic on a daily basis anymore, providing those kinds of services. It's certainly information I could look

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Transcriber's Office

Judiciary Committee
March 01, 2013

for and send to you. [LB300]

SENATOR DAVIS: Would you think it would be logical, if that is your objective is to provide as much information as possible, to maybe to that? [LB300]

TRACY DURBIN: We do have some videos on abortion services. I just don't know exactly what's contained in all of that. [LB300]

SENATOR DAVIS: Thank you. [LB300]

SENATOR ASHFORD: Okay, thank you. [LB300]

TRACY DURBIN: Thank you. [LB300]

SENATOR ASHFORD: Bob. [LB300]

SENATOR KRIST: If you were a judge on a court and you were hearing something as a matter of court, I think my statement in opening is still relative, it's still correct. To me, I spent the last few years trying to make the Department of Health and Human Services do what they're supposed to do. That's what this is about. It's about making sure that the best information on informed consent is available and not hiding behind the fact that they want to do something and not do something in another area. So, to answer Senator Chambers once again, I may be an antiabortion person, I may be a prolife person, I may have my own convictions, but as a legislator I respect the fact that, up until 20 weeks, a woman makes a choice. I just want her to have all of the information possible, informed consent to make the right decision. I served with a woman in the military who was forced, in the old days, to have an abortion. She didn't know the consequences; she didn't know the ramifications; she eventually had some emotional issues and PTSD, which complicated the issue. That was a different time and a different day. And if all we do is require the Department of Health and Human Services to do what they need to do, that's fine. Two other comments very quickly, and I know everybody wants to leave. What will future parents Google? What will they look at? You heard one of these young ladies tell you her personal story, and she went to the provider Web site. Maybe that's logical, maybe it's not. [LB300]

SENATOR MCGILL: She's saying what she...that was a hypothetical of what she thought she would do. [LB300]

SENATOR KRIST: Right. That's just right. [LB300]

SENATOR MCGILL: Yeah. [LB300]

SENATOR KRIST: Maybe that's the logical way. I don't know the answer to that. What

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 01, 2013

will they Google? Where do we give them the best informed consent information? I sure as heck know that that's not the basement in a box of books, whether it's available here or it's available in the site. So, to Senator Coash's point, I would just simply say, if we don't want to go that extra step to make the providers link, that's your choice. [LB300]

SENATOR ASHFORD: I think you've got real constitutional problems with that, Bob. [LB300]

SENATOR KRIST: And I'd be willing to talk about that. [LB300]

SENATOR ASHFORD: So it seems to me that, if you want to do the HHS thing, it seems like a logical thing to do and... [LB300]

SENATOR KRIST: But I would say that Planned Parenthood, to come in and make a statement that they don't think it's reasonable, nationwide it's already happening. [LB300]

SENATOR ASHFORD: Well, I mean, the bottom line is information is making a difference in the rate of abortion, and I think everybody can hopefully agree that that's the right trend, so. [LB300]

SENATOR MCGILL: Um-hum. [LB300]

SENATOR KRIST: That's why you're a lawyer and I'm a pilot. [LB300]

SENATOR ASHFORD: No, no. (Laughter) No, no, no. Trust the...and thank goodness I'm not a pilot. (Laughter) And with that... [LB300]

SENATOR MCGILL: Oh, dear. [LB300]

SENATOR LATHROP: We'd see...the jet stream would be like this. [LB300]

SENATOR MCGILL: Oh. [LB300]

SENATOR ASHFORD: Thanks, Bob, very much. [LB300]

SENATOR KRIST: You bet. Thank you. [LB300]